

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X	X	
In re	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	Case No. 08-12229 (MFW)
Debtors.	:	Re: Docket No. 1206
-----X	X	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Plaintiff,	:	Adversary No. 09-50551 (MFW)
v.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
Defendants and Counterclaimants,	:	
and	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Additional Defendant for Interpleader claim.	:	Re: Docket No. 49
-----X	X	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
Plaintiffs,	:	Adversary No. 09-50934 (MFW)
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Defendant.	:	Re: Docket No. 48
-----X	X	

DEBTORS' OPPOSITION TO THE MOTION OF JPMORGAN CHASE BANK, N.A. FOR WITHDRAWAL OF THE REFERENCE OF THE ADVERSARY PROCEEDINGS PURSUANT TO 28 U.S.C. § 157(d)

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395).



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PRELIMINARY STATEMENT

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and with WMI, "Debtors") file this opposition to the motion (the "Motion") (Docket No. 1206) of JPMorgan Chase Bank, National Association ("JPMC"), to withdraw the reference to the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") with respect to two adversary proceedings: one commenced by JPMC itself and another commenced by the Debtors seeking the turnover of more than \$4 billion in deposits formerly kept with their subsidiary bank and now wrongfully withheld by JPMC. After commencing its own adversary proceeding in the Bankruptcy Court by filing a complaint that asserts that the Bankruptcy Court has jurisdiction "pursuant to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1334, 28 U.S.C. § 157, and Bankruptcy Rule 7001" and that venue is "proper pursuant to 28 U.S.C. § 1409(a)" and filing more than 40 proofs of claim with the Bankruptcy Court, in a telling sign that JPMC will stop at nothing to derail and delay the Bankruptcy Court proceedings, JPMC filed this motion nearly three months later. JPMC has then proceeded to participate significantly in both adversary proceedings, including requiring the Debtors to answer and counterclaim to its complaint, and proposing extensive schedules for the taking of discovery and motion practice. Even more telling than the timing of the Motion relative to JPMC's commencement of its own adversary proceeding is the fact that JPMC filed this meritless Motion at nearly midnight on the night before the Bankruptcy Court heard argument on, and denied, motions by the FDIC to stay, and by JPMC to transfer or stay, the adversary proceedings. Those motions were appropriately denied by the Bankruptcy Court because they were premised upon an inapplicable jurisdictional bar. The reasoning expressed in that ruling applies with equal force to this Motion, yet this has not deterred JPMC from proceeding with this Motion as part of its overall delay strategy so that it can continue to unjustifiably withhold the Debtors' assets – including the \$4 billion in deposits

– while causing the bankruptcy estates to incur significant administrative expenses and frustrating the Debtors' effort to make long-awaited distributions to their respective creditors who have not yet realized any recovery. The Motion, an untimely, transparent attempt at forum shopping and delay, should be denied.

SUMMARY OF ARGUMENT

JPMC fails to carry its significant burden to warrant withdrawal of the adversary proceedings. The Motion asserts that withdrawal of the reference is mandatory because the Bankruptcy Court will need to substantially and materially consider (i) a jurisdictional bar imposed by the Federal Deposit Insurance Act (the "FDI Act"), and (ii) federal banking laws in resolving the pending adversary proceedings. Both assertions are patently false.

The Bankruptcy Court has already disposed of the former, finding that the purported jurisdictional bar, as interpreted by controlling Third Circuit law did not apply to the adversary proceedings. The applicable law in the Third Circuit on this issue is clear and unequivocal, and the Bankruptcy Court's application of that law is sound. Thus, JPMC's argument should be rejected as a basis for withdrawal of the reference. JPMC's argument that the Bankruptcy Court will need to "substantially and materially consider federal banking laws" is similarly groundless. Before assessing JPMC's specific assertions of non-bankruptcy federal law implications, JPMC's argument must be viewed in light of two related facts. One, JPMC recently invented this meritless argument after considering the Bankruptcy Court the appropriate place to file its own adversary proceeding and more than 40 proofs of claims. Two, it is clear that both adversary proceedings comprise core bankruptcy proceedings for which the Bankruptcy Court is uniquely equipped to resolve. Specifically, the Debtors assert the following core claims: two turnover actions, nine avoidance actions seeking to avoid preferential and fraudulent transfers, disallowance of bankruptcy claims under the Bankruptcy Code, and two counts seeking

determinations as to whether certain assets are property of the Debtors' estates. Similarly, JPMC seeks declarations regarding the proper ownership of assets.

Notwithstanding the fact that these claims are squarely within the Bankruptcy Court's exclusive jurisdiction over property of the Debtors' estates and claims to determine property of the estates, JPMC attempts to argue that the resolution of such claims will necessarily require substantial and material consideration of non-Title 11 federal laws. In support of its argument, JPMC refers to inapplicable federal banking statutes and inapposite case law in a transparent attempt to divert the Court's attention from the fact that its assertions have no substance, and raise no conflict or complex issue of law requiring significant interpretation. To the extent the Bankruptcy Court, in adjudicating the adversary proceedings, will be asked to give any consideration to federal banking laws, that consideration will be, at most, tangential, and certainly will not meet the "meaningful consideration" standard implemented by this district in assessing mandatory withdrawal of the reference.

Indeed, JPMC's very own actions are perhaps the most telling admission that the issues in the adversary proceedings have little, if anything, to do with federal banking law. As noted above, it was JPMC that first submitted to the Bankruptcy Court's jurisdiction by filing an adversary proceeding and more than 40 proofs of claim, putting in the hands of the Bankruptcy Court the issue of ownership of numerous assets. JPMC admitted in its complaint that the Bankruptcy Court had jurisdiction and that venue was proper, and never said a word about there being a need to consider federal banking law. That the Debtors would counterclaim – and assert their ownership over those assets – could hardly have been unexpected. JPMC then pursued such litigation in the Bankruptcy Court for months. Equally telling is the fact that in connection with the Debtors' action seeking turnover of their own deposits, JPMC filed two memoranda of

law with the Bankruptcy Court, *but never once said a word about federal banking law* supposedly governing resolution of the dispute. Subsequently, when JPMC joined the FDIC's motion to dismiss or stay the adversary proceedings, seeking a transfer to Washington D.C., as it seeks to do here impermissibly, JPMC raised only the purported jurisdictional bar and again failed to assert that federal banking law would have to be applied. In short, JPMC not only affirmatively asserted on multiple occasions that the Bankruptcy Court was the proper forum to adjudicate the issues raised in the adversary proceedings, but also failed on numerous other occasions to assert its recently contrived "federal banking law" argument.

JPMC also claims that permissive withdrawal of the reference is appropriate, but the relevant factors all require denial of JPMC's Motion. As a threshold matter, as discussed above, the Debtors' claims are comprised of core bankruptcy actions. JPMC "does not object" to this characterization – because it cannot. As for the issue of timing, JPMC filed its motion nearly three months after filing its own complaint and proofs of claim and nearly a month after the Debtors answered and asserted their counterclaims. If this timeline alone does not implicate obvious forum shopping, JPMC's actions, including filing this Motion on the literal eve of the hearing on its and the FDIC's motion to stay or transfer the adversary proceedings, and forging ahead with this Motion without modification notwithstanding the Bankruptcy Court's finding concerning the (in) applicability of the FDI Act's jurisdictional bar, leave no question as to its motive. Finally, and perhaps most importantly, expediting the bankruptcy process calls out for denying JPMC's Motion. The Debtors, and their creditors, are badly in need of their cash deposits to construct a chapter 11 plan and have made progress in contesting JPMC's stubborn refusal to turn those funds over. However, JPMC, unconcerned with the expedition of the Debtors' bankruptcy cases, would like nothing more than to have central issues in the Debtors'

bankruptcy proceedings ripped from the Bankruptcy Court and delivered to a new court to further delay the ultimate, necessary resolution of the disputes between the parties. The Motion should be denied and the Debtors' efforts to resolve the adversary proceedings and its own chapter 11 bankruptcy case should be allowed to proceed.

BACKGROUND

I. THE CLOSURE OF WMB, THE TITLE 12 RECEIVERSHIP, AND THE DC ACTION

On September 25, 2008, Washington Mutual Bank ("WMB") was closed and placed into receivership by the Federal Deposit Insurance Corp. (the "FDIC"). On the same day, the FDIC purportedly sold substantially all of WMB's assets, including the stock of its subsidiary Washington Mutual Bank fsb ("WMB fsb"), to JPMC for \$1.88 billion, and the assumption of all of WMB's deposit liabilities, including those deposit liabilities owed to the Debtors (the "P&A Transaction"), pursuant to that certain Purchase and Assumption Agreement Whole Bank (the "P&A Agreement").² Shortly thereafter, JPMC assumed all of WMB fsb's deposit liabilities by merging WMB fsb with its own banking operations.

In connection with WMB's receivership, as required by section 11(d) of the FDI Act (12 U.S.C. § 1821(d)), the FDIC set December 30, 2008, as the last day to file claims against WMB. On January 23, 2009, the FDIC disallowed the Debtors' claims in a one-page Notice of Disallowance. Because the FDI Act required the Debtors to challenge the disallowance of claims within 60 days,³ Debtors filed a Complaint in the District Court for the District of

² (P&A Agreement, JPMC Appx. at A1 – A44). To avoid unnecessary duplication, where applicable, the Debtors respectfully refer the Court to documents included in the Appendix in Support of JPMC's Motion attached to the Motion.

³ The Disallowance Notice stated in part: "[I]f you do not agree with this disallowance, you have the right to file a lawsuit on your claim ... in the United States District (or Territorial) Court for the District within which the failed Institution's principal place of business was located or the (footnote continued)

Columbia, on March 20, 2009,⁴ challenging the FDIC's disallowance of claims (the "DC Action").⁵ That case has proceeded on a comparatively slow pace. The FDIC, in its capacity as receiver, issued its answer to the Debtors' complaint, along with a motion to dismiss in which it seeks to have dismissed all of the Debtors' claims other than those for which it filed proofs of claim for, including the Debtors' claim to avoid certain capital contributions transferred to WMB prior to its closure, on June 11, 2009. The deadline for the Debtors' response is July 16, 2009. Importantly, there have been no decisions issued, no discovery taken, and no oral argument presented in the DC Action. Although JPMC has moved to intervene, the Debtors have contested the motion, and JPMC is currently not a party to the DC Action.

II. THE BANKRUPTCY CASES AND ADVERSARY PROCEEDINGS COMMENCED THEREIN

On September 26, 2008, (the "Petition Date") the Debtors each commenced a voluntary case pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") in the Bankruptcy Court. Currently, there are two multi-billion dollar pending adversary proceedings to which JPMC is party.

United States District Court for the District of Columbia within 60 days from the date of this notice. **IF YOU DO NOT FILE A LAWSUIT ... BEFORE THE END OF THE 60-DAY PERIOD, THE DISALLOWANCE WILL BE FINAL, YOUR CLAIM WILL BE FOREVER BARRED AND YOU WILL HAVE NO FURTHER RIGHTS OR REMEDIES WITH RESPECT TO YOUR CLAIM.**" (Emphasis and capitalization in original.)

⁴ (Debtors' Complaint, JPMC Appx. at A68 – A106).

⁵ Once a creditor files a claim with the agency, the FDIC has 180 days to either allow or disallow it. 12 U.S.C. § 1821(d)(5)(A)(i). A claimant who is dissatisfied with the agency's determination then has 60 days either to request administrative review or to file suit on the claim. 12 U.S.C. § 1821(d)(6)(A). The claimant is authorized to bring suit either in "the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia." *Id.*

A. JPMC's Adversary Proceeding

On March 24, 2009, JPMC commenced an action, captioned *JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc. et al.*, Adv. Proc. No. 09-50551 (MFW) (the "JPMC Adversary Proceeding") (Docket No. 807), in which it asserts an ownership interest in various assets that it allegedly purchased from the FDIC pursuant to the P&A Agreement, including the Trust Securities, Tax Refunds, the Debtors' Deposit Accounts, Goodwill Litigation, Rabbi Trusts, Pension and 401(k) Plans, Bank Owned Life Insurance Policies, Visa Shares, and certain Intangible Assets (each as defined in the complaint filed in the JPMC Adversary Proceeding).⁶ There is no mention in JPMC's complaint about the issues raised by the JPMC Adversary Proceeding being governed by federal banking law or the Bankruptcy Court lacking the capacity to decide the issues. To the contrary, in its complaint, JPMC asserts that the Bankruptcy Court has jurisdiction "pursuant to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1334, 28 U.S.C. § 157, and Bankruptcy Rule 7001" and that venue is "proper pursuant to 28 U.S.C. § 1409(a)." JPMC has neither disclaimed those allegations nor withdrawn that complaint. On May 22, 2009, the Debtors filed their answer to JPMC's complaint including eighteen counterclaims (the "Counterclaims") asserting, among other things, affirmative claims under the Bankruptcy Code's avoidance provisions and under state law as incorporated by the Bankruptcy Code (*i.e.*, 11 U.S.C. §§ 541, 544, 547, 548), for the avoidance of more than \$10 billion in preferential and fraudulent prepetition transfers of the Debtors' assets to WMB that were subsequently transferred to JPMC.⁷

⁶ (JPMC Complaint, JPMC Appx. at A145 – A211).

⁷ (Debtors' Answer and Counterclaims, JPMC Appx. at A212 – A345).

B. JPMC Files More Than Forty Proofs of Claim with the Bankruptcy Court

Confirming its intent to submit to the equitable jurisdiction of the Bankruptcy Court and its desire to see the Bankruptcy Court adjudicate disputed issues between JPMC and the Debtors, on March 30, 2009, just six days after commencing the JPMC Adversary Proceeding, JPMC filed more than 40 proofs of claim with the Bankruptcy Court.⁸ Separate proofs of claim were filed for each of the aforementioned assets that are the subject of the JPMC Adversary Proceeding. Among the Debtors' Counterclaims is a request that all such claims be disallowed pursuant to section 502(d) of the Bankruptcy Code.

C. The Debtors' Turnover Action

The second adversary proceeding was commenced by the Debtors on April 27, 2009, under the Bankruptcy Code's turnover provision (11 U.S.C. § 542(b)), captioned *Washington Mutual, Inc. et al. v. JPMorgan Chase Bank, N.A.*, Adv. Proc. No. 09-50934 (MFW) (the "Turnover Action," and with the JPMC Adversary Proceeding, the "Adversary Proceedings") (Docket No. 960).⁹ In the Turnover Action, the Debtors assert an unquestionable right to approximately \$4 billion in deposits formerly held at WMB and at WMB fsb (the "Deposits"), demanding the payment of those funds to the Debtors' estates.¹⁰ JPMC filed a motion to dismiss

⁸ Attached as exhibit A hereto is an Appendix in Support of the Debtors' Opposition to the Motion. (JPMC's Proofs of Claim, Debtors' Appx. at B1 – B207.)

⁹ (Debtors' Turnover Action Complaint, Debtors' Appx. at B208 – B228.)

¹⁰ More than five months earlier, on October 14, 2008, the Debtors entered into a stipulation with JPMC (the "Account Stipulation"), pursuant to which JPMC agreed with the Debtors that the Deposits, were deposit accounts of the Debtors. The Account Stipulation provided further that the Deposits were to remain subject to claims, rights and remedies that JPMC may have had, and afforded JPMC replacement liens to the extent of any such interests. Although the motion seeking approval of the Account Stipulation that the Debtors filed with JPMC's support with the Bankruptcy Court was subsequently withdrawn on January 26, 2009, JPMC never once asserted that the Bankruptcy Court was not the proper court to resolve the Deposits or that substantial or material considerations of federal banking law would be implicated.

the Turnover Action on May 13, 2009, and reply brief to the Debtors' opposition on June 3, 2009,¹¹ in which JPMC argued that there was a genuine dispute as to ownership of the Deposits. None of the supposed disputes that JPMC identified in their briefs involved the substance of the FDI Act. In fact, other than the asserted applicability of the FDI Act's jurisdictional bar (since rejected by the Bankruptcy Court), JPMC's briefs do not even cite to the FDI Act at all, and contain not a word about "federal banking law" controlling the underlying issues. At the hearing held on June 24, 2009 (the "June 24 Hearing"), the Bankruptcy Court was presented with oral argument on JPMC's motion to dismiss the Turnover Action, and JPMC again argued that the Deposits were subject to dispute, but did not identify any purported disputes under the FDI Act. The Court denied the motion to dismiss, finding that the Debtors' complaint and accompanying exhibits describe exactly the type of debt contemplated by section 542(b) of the Bankruptcy Code, without any indication of a genuine dispute as to "the title to the . . . deposit accounts." (Tr. 6/24/09 at 117.)¹² On July 6, 2009, JPMC answered the Debtors' complaint and asserted counterclaims which are largely duplicative of the claims asserted in the JPMC Adversary Proceeding. In its answer, JPMC asserts that the Bankruptcy Court has jurisdiction "pursuant to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1334 and 1335, 28 U.S.C. § 157, and Bankruptcy Rules 7013, 7019 and 7020."¹³

¹¹ (JPMC's Motion to Dismiss Turnover Action Complaint and Reply Brief, Debtors' Appx. at B229 – B267.)

¹² (June 24 Hearing Transcript, Debtors' Appx. at B268 – B385.) On May 19, 2009, Debtors filed their Motion for Summary Judgment in the Turnover Action, in which they present extensive and compelling evidence demonstrating that they in fact are owed the Deposits and that they are entitled to have JPMC promptly remit those funds. (Debtors' Motion for Summary Judgment, Debtors' Appx. at B386 – B416 (exhibits omitted).)

¹³ (JPMC's Answer and Counterclaims to Debtors' Turnover Action Complaint, Debtors' Appx. at B417 – B466.)

In addition to commencing the JPMC Adversary Proceeding, JPMC has participated meaningfully in both Adversary Proceedings, including engaging in discussions with the Debtors concerning extensive schedules for the taking of discovery and motion practice.

D. The Court's Ruling Denying JPMC's Motion to Stay and Rejecting JPMC's Arguments Concerning the FDI Act's Jurisdictional Bar

JPMC and the FDIC filed motions to stay the Adversary Proceedings, in which both parties argued that the Turnover Action and Debtors' Counterclaims are barred jurisdictionally under section 1821(d)(13)(D) of the FDI Act. Well after the matter was fully briefed by all three parties, JPMC filed this Motion on the literal eve of the June 24 Hearing. Although the Motion was not on the Court's calendar, JPMC – in a transparent attempt to further persuade (or perhaps intimidate) the Bankruptcy Court to stay or send the adversary proceedings to Washington D.C. – specifically referenced this Motion in the course of its argument several times. (Tr. 6/24/09 at 21, 83, 85.) There was extensive oral argument presented by JPMC and the FDIC; the Bankruptcy Court properly denied the motions to dismiss, stay, or transfer.¹⁴ The Bankruptcy Court, applying controlling Third Circuit authority, found that the FDI Act applies to claims against the FDIC for assets in receivership, and that the Debtors' claims against a successor bank, JPMC, are appropriately before the Bankruptcy Court. (Tr. 6/24/09 at 93-94.) The Bankruptcy Court also rejected arguments by the FDIC and JPMC invoking the "first filed rule" as an alternative basis to defer to the DC Action, reasoning that the Bankruptcy Court has "exclusive" jurisdiction over the Turnover Action and the Debtors' Counterclaims and noting that the DC Action and the Adversary Proceedings do not involve "the same claims." (Tr. 6/24/09 at 94.)

¹⁴ (Bankruptcy Court's Orders Denying Motions of JPMC and FDIC to Stay Adversary Proceedings, Debtors' Appx. at B467 – B471.)

JPMC filed a motion to dismiss the Debtors' Counterclaims prior to the Bankruptcy Court's recent ruling, and its position is based on the identical argument that the Bankruptcy Court has now rejected—*i.e.*, that section 1821(d)(13)(D) of the FDI Act bars the Debtors' Counterclaims against JPMC.¹⁵ In light of the Court's ruling that the bar does not apply, the Debtors contacted JPMC, by email dated June 26, 2009, and requested that it withdraw the motion to dismiss. JPMC declined to do so without explanation, and has elected instead to continue to pursue an argument that the Bankruptcy Court has specifically rejected – with respect to both the motion to dismiss the Counterclaims and the instant Motion. The Debtors filed their opposition to JPMC's motion to dismiss on July 2, 2009.¹⁶

ARGUMENT

Pursuant to 28 U.S.C. § 157(a), district courts may refer cases under title 11 and matters connected to bankruptcy cases to the bankruptcy court for disposition. Under section 157(d), the referred proceeding can be withdrawn from the bankruptcy court and returned to the district court only under limited circumstances. Permissive withdrawal of the reference is warranted "for cause shown." Mandatory withdrawal of the reference is warranted "if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d). In either event, the motion to withdraw must be "timely." *Id.*

Importantly, courts narrowly construe section 157(d) to prevent litigants from using it as an "escape hatch" out of bankruptcy court; otherwise, bankruptcy matters could routinely be

¹⁵ (JPMC Brief in Support of Motion to Dismiss Debtors' Counterclaims, JPMC Appx. at A346 – A378).

¹⁶ (Debtors' Opposition Brief to JPMC's Motion to Dismiss Debtors' Counterclaims, Debtors' Appx. at B472 – B500.)

removed to the district court which clearly was not what Congress's intended. *See In re Smith-Corona Corp.*, 205 B.R. 712, 714 (D. Del. 1996). The party seeking withdrawal of the reference, in this case JPMC, bears the significant burden of establishing that withdrawal is appropriate. *IRS v. CM Holdings, Inc. (In re CM Holdings, Inc.)*, 221 B.R. 715, 721 (D. Del. 1998). JPMC fails to satisfy this burden with respect to both mandatory and permissive withdrawal.

I. MANDATORY WITHDRAWAL OF THE REFERENCE IS NOT WARRANTED.

A. Withdrawal is Not Appropriate Because JPMC's Request is Not Timely

JPMC's Motion does not meet the threshold requirement set forth in 28 U.S.C. § 157(d) that such a motion be timely. A motion to withdraw should be made "as soon as possible" or at the "first reasonable opportunity" after it is apparent that there is a basis for such a motion. *Young v. Snider*, No. CIV.A. 94-0005, 1994 WL 81955, at *2 (E.D. Pa. Mar. 11, 1994); *see also In re Pruitt*, 910 F.2d 1160, 1171 (3d Cir. 1990) (Mansmann, J., concurring). "Delay for tactical reasons, such as forum shopping, or which prejudices the opposing party or the administration of justice, can be grounds for denying a withdrawal motion as untimely." *In re FMI Forwarding Co., Inc.*, No. 00 B. 41815(CB), 2005 WL 147298, at *6 (S.D.N.Y. Jan. 24, 2005).

It cannot be disputed that JPMC, which over three months ago initiated the very action it now seeks to withdraw, has not sought to withdraw the reference "at the first reasonable opportunity." Rather, JPMC waited until after it filed over 40 proofs of claim and at least 17 substantive pleadings, including a motion to dismiss the Turnover Action, a motion to dismiss the Counterclaims, a motion to transfer or stay the Adversary Proceedings, and other motions and pleadings. Given that JPMC intentionally initiated the JPMC Adversary Proceeding having all the information it now relies upon to withdraw the reference, its Motion should be denied as untimely. *See, e.g., In re Allegheny Health Educ. and Research Found.*, Nos. CIV A 06-1469, 98-25773, 06-2031, 2006 WL 3843572, at *2 (W.D. Pa. Dec. 19, 2006) (motion was untimely

where arguments in support thereof "could have been made the day that the adversary proceeding complaint was filed"); *Young*, 1994 WL 81955, at *3 ("movants did not request withdrawal of the reference 'as soon as possible' after they had notice of the grounds for withdrawal and [], therefore, the late request for withdrawal is untimely and has resulted in waiver").

Furthermore, JPMC's inexcusable delay has prejudiced the Debtors and the estates. The Debtors and the Official Committee of Unsecured Creditors have expended significant resources litigating these matters in the Bankruptcy Court, and the Bankruptcy Court has dedicated significant time to understanding the issues and has already ruled upon the motion to dismiss the Turnover Action and the motion to stay the Adversary Proceedings. Withdrawing the reference at this stage will only serve to delay the proceedings and cause prejudice. *See, e.g., Allegheny Health Educ. and Research Found.*, 2006 WL 3843572, at *2 (party's delay in filing withdrawal motion would delay proceedings and prejudice Trustee and courts, which had already dedicated substantial time and resources to proceedings); *see also supra* Part II.B .

Finally, there are numerous indicia that JPMC is partaking unabashedly in forum shopping. First, JPMC's filing of the Motion on the eve of the June 24 Hearing demonstrates that JPMC sought to use withdrawal of the reference as a safeguard against an adverse ruling on its motion to transfer or stay. Now, JPMC has already argued (unsuccessfully) in its papers and at the June 24 Hearing that the Adversary Proceedings should be transferred to the District Court for the District of Columbia. *See* JPMC Response to FDIC Motion to Stay at 2 ("transfer would be appropriate because [the JPMC Adversary Proceeding] is 'materially on all fours ' with the D.C. Action"); Tr. June 24 Hearing at 60 ("We have suggested that the proper -- a preferable course may be to transfer these actions to D.C., so they can all be adjudicated together."). The

Bankruptcy Court effectively rejected these arguments in finding that the "first-filed" rule was inapplicable to the Adversary Proceedings. (*See* Tr. June 24 Hearing at 94.) JPMC is using this Motion as an end run around the Bankruptcy Court's refusal to transfer or stay the Adversary Proceedings. Moreover, putting aside issue preclusion, which bars any contemplated JPMC transfer request (*see infra* Part II.C.), JPMC could have moved the Bankruptcy Court to transfer the Adversary Proceedings pursuant to Bankruptcy Rule 7087 which provides for transfer of adversary proceedings pursuant to 28 U.S.C. § 1412. Fed. R. Bankr. P. 7087. However, given the Bankruptcy Court's ruling, JPMC chooses instead to proceed with the Motion to achieve what it has already been denied – transfer to the District Court for the District of Columbia. The court should not countenance such gamesmanship. *See, e.g., In re New York Trap Rock Corp.*, 158 B.R. 574, 577 (S.D.N.Y. 1993) (motion untimely where **three months** that elapsed between filing and motion were "rich with events" suggesting forum shopping); *Drew v. WorldCom, Inc.*, No. 06 Civ. 3407(JGK), 2006 WL 2129309, at *3 (S.D.N.Y. July 26, 2006) (denying motion where the timing "gives rise to a strong inference that [moving party] is attempting to forum shop" because motion was filed three weeks after opposing party filed significant motions in the Bankruptcy Court and motion contradicted moving party's prior admission that claim was "core proceeding" over which Bankruptcy Court had jurisdiction).

Because JPMC's Motion is not timely and was motivated purely by tactical reasons and forum shopping, the Court should deny it outright.

B. Withdrawal is Not Mandatory Because Resolution of the Adversary Proceedings Will Not Require "Meaningful Consideration" of Federal Banking Laws

In an effort to avoid the obvious conclusion that the Bankruptcy Court should decide core bankruptcy issues, JPMC attempts to gin up purported issues of federal banking law supposedly implicated by the Adversary Proceedings. However, the law in this district is clear that the mere

specter of tangentially-related non-Title 11 federal law cannot support mandatory withdrawal of the reference. To the contrary, mandatory withdrawal is only appropriate when consideration of law outside of the Bankruptcy Code is both (1) *necessary* for the resolution of the case or proceeding; and (2) *substantial and material* to the resolution of the case or proceeding. *In re Columbia Gas Sys., Inc.*, 134 B.R. 808 (D. Del. 1991) (denying motion for withdrawal because substantial and material consideration of the Natural Gas Policy Act and Decontrol Act not required to adjudicate debtor's motion).

With respect to the latter requirement, the consideration of non-Title 11 federal law will only be considered "substantial and material" where it requires "meaningful consideration" as opposed to the "simple application" of well-settled law. *See Smith-Corona*, 205 B.R. at 714 (finding "straightforward application" of relevant ERISA provisions did not warrant mandatory withdrawal even though "an analysis of the interplay between ERISA and the Bankruptcy Code is involved"); *In re Camden Ordnance Mfg. Co. of Arkansas, Inc.*, 245 B.R. 794, 806 (E.D. Pa. 2000) (denying motion to withdraw reference where issue of law was "well settled" did not "require complex interpretation of non-title 11 federal law"). Some courts have articulated the standard as requiring that the non-bankruptcy issue be one of "first impression" that is "sharply in conflict" with Title 11. *See, e.g., In re Continental Airlines*, 138 B.R. 442 (D. Del. 1992) (determining that bankruptcy court was perfectly capable of making determination concerning validity of settlement of debtor's ERISA liability).

Here, JPMC has asserted in the JPMC Adversary Proceeding a litany of claims seeking rulings that certain disputed assets are owned by JPMC pursuant to the P&A Agreement. Rather than implicating the FDI Act or any other non-Title 11 federal law, the beginning and end of the matter is the Bankruptcy Court, which has exclusive jurisdiction to decide whether an asset is

property of the estate. *See* Tr. June 24 Hearing at 95 ("I do have exclusive jurisdiction to decide what is property of the estate. If I determine that the property at issue is property of the estate, then this Court has exclusive jurisdiction over that property, and over claims, counterclaims, other claims against the estate."); *Garrity v. Leffler (In re Neuman)*, 71 B.R. 567, 573-74 (S.D.N.Y. 1987) ("[F]orays to other forums to determine what is property of the estate for purposes of bankruptcy law are not only time-consuming, but disrupt the heart of the duties that the [bankruptcy] court is designed to perform.").

Likewise, nine of the Debtors' Counterclaims are avoidance actions authorized by chapter 5 of the Bankruptcy Code. (Counterclaims 1-6, 8-10, & 12.) One is a turnover proceeding and another is a claim disallowance count, pursuant to sections 542 and 502 of the Bankruptcy Code, respectively. (Counterclaims 11, 13.) Two more are declaratory judgment actions seeking rulings that certain assets are property of the Debtors' bankruptcy estates. (Counterclaims 7, 12.) Clearly, these core bankruptcy claims¹⁷ are within the Bankruptcy Court's special expertise and involve issues with which the Bankruptcy Court is intimately familiar. It cannot be seriously disputed that these bankruptcy causes of action, creatures of the Bankruptcy Code itself, should be adjudicated by the Bankruptcy Court.

With respect to the Turnover Action, also a core bankruptcy proceeding, JPMC has already briefed and argued a motion to dismiss without once raising any issue of federal banking

¹⁷ The Debtors' claims are "core proceedings" as defined under 28 U.S.C. 157(b) because they are created by the Bankruptcy Code, and, moreover, are expressly enumerated in section 157(b) as core proceedings. *See* 28 USC §§ 157(b)(2)(A) - (O) ("Core proceedings include, but are not limited to - ... (B) allowance or disallowance of claims against the estate or exemptions from property of the estate . . . (E) orders to turn over property of the estate . . . (F) proceedings to determine, avoid, or recover preferences . . . and (H) proceedings to determine, avoid, or recover fraudulent conveyances..."). *See, e.g., All Star Int'l Trucks, Inc. v. Burlington Motor Carriers, Inc. (In re Burlington Motor Holdings, Inc.)*, 2002 U.S. Dist. LEXIS 718 (D. Del. Jan. 17, 2002) ("avoidance actions are a creation of bankruptcy law and are within the matters enumerated in 28 U.S.C. § 157 as core proceedings").

law. *See* JPMC Motion to Dismiss; Tr. June 24 Hearing. Other than a footnote concerning the asserted applicability of the FDI Act's jurisdictional bar (since rejected by the Bankruptcy Court), JPMC's brief in support of its motion to dismiss does not cite to the FDI Act. Moreover, because the basis of JPMC's argument in support of dismissal was the purported existence of legitimate disputes over ownership of the assets, JPMC raised every issue to the Bankruptcy Court – both factual and legal – that it could muster. In other words, JPMC's motion to dismiss serves as a road map to this Court to assess what, if any, non-bankruptcy federal law issues may arise. Not one of the issues raised by JPMC implicated the FDI Act. Rather, JPMC raised issues of setoff and ownership interest (core competencies of the Bankruptcy Court), *see In re Sahni*, 227 B.R. 748, 751 (D. Kan. 1998), in addition to certain factual questions concerning whether the Debtors' Deposits were held by WMB or WMB fsb.

It is clear from even a cursory review of the record to date in the Adversary Proceedings that resolution of these proceedings will not require meaningful consideration of the FDI Act or any other non-Title 11 federal law. Indeed, courts considering the same or similar federal banking laws in analogous circumstances have held that mandatory withdrawal of the reference is not merited. *See, e.g., Sahni*, 227 B.R. at 751 (denying FDIC's motion to withdraw reference based upon FDIC's right to recover fraudulent transfers under FDI Act provisions (analogous to chapter 5 Bankruptcy Code avoidance actions) because bankruptcy court's resolution of case would not require "substantial and material" consideration of FDI Act fraudulent conveyance provision which granted FDIC a priority right, noting that priorities of various parties is something a "bankruptcy judge is frequently required to decide"); *Hassett v. BancOhio Nat'l Bank (In re CIS Corp.)*, 172 B.R. 748 (S.D.N.Y. 1994) (mandatory withdrawal inapplicable because resolution of various debtor claims, including avoidance actions, will not require more

than a "straightforward application or routine interpretation" of the National Banking Act, the Competitive Equality Banking Act, and certain related regulations issued by the Comptroller of the Currency). JPMC's assertions of federal banking law implications should be reviewed with even greater scrutiny than in the aforementioned cases because JPMC has submitted itself to the equitable jurisdiction of the Bankruptcy Court through the commencement of the JPMC Adversary Proceeding and the filing of more than 40 proofs of claim. *See In re Best Prods. Co.*, 1994 U.S. Dist. LEXIS 5088 (S.D.N.Y. Apr. 19, 1994) (denying RTC's motion for mandatory withdrawal of case because the RTC had filed proofs of claim with the debtor's estate).

Other than the FDI Act's jurisdictional bar (which the Bankruptcy Court has already ruled inapplicable under controlling Third Circuit law, and consideration of which other district courts have found not to warrant withdrawal in any event),¹⁸ JPMC relies upon mere conclusory statements, inapposite case law, and citations to tangentially-related statutes, policy statements, and handbooks to raise the specter of FDI Act implications.¹⁹ As set forth more fully below, JPMC's arguments are red herrings, devoid of any substance identifying the purported conflict or the analysis the Bankruptcy Court will have to undertake.

¹⁸ *See, e.g., Best Prods. Co.*, 1994 U.S. Dist. LEXIS 5088 (refusing to grant RTC's motion for mandatory withdrawal of case based upon the FDI Act's jurisdictional bar because the RTC, who asserted "a collision between the Bankruptcy Code and the FDI Act" had filed proofs of claim with the debtor's estate); *In re CIS Corp.*, 140 B.R. 351 (S.D.N.Y. 1992) ("To set a precedent providing for the withdrawal of bankruptcy proceedings to a district court whenever [jurisdictional] issue arises would work against the purposes of FIRREA itself, which was enacted 'to deal expeditiously' with the assets of failed depository institutions.").

¹⁹ Beyond these inapplicable provisions, JPMC repeatedly suggests some vague "federal banking law" creates "issues that permeate the disputes among the parties." (*See, e.g.,* Motion at 23 n.11.) This nebulous contention cannot carry the Motion, however, given that the Supreme Court has expressly held that there is no federal common law supplementing the specific statutory provisions of the FDI Act. *See O'Melveny & Myers v. F.D.I.C.*, 512 U.S. 79 (1994). Accordingly, to the extent none of those specific statutory provisions apply here (which they do not for the reasons explained in the text), there simply is no other "federal banking law" that could be implicated in the Adversary Proceedings.

1. *Capital Contributions*

JPMC claims that the fact that the Debtors have asserted avoidance actions for the recovery of capital contributions against JPMC, pursuant to chapter 5 of the Bankruptcy Code somehow "is in fundamental conflict with Title 12's administrative and priority distribution scheme." (Motion at 19-20.) First, courts have recognized that the FDI Act does not supersede the Bankruptcy Code's avoidance actions. *See In re First Republicbank Corp.*, 1990 Bankr. LEXIS 2840 (Bankr. N.D. Tex. June 19, 1990) ("Congress can, but has not provided that Section 548 of the Bankruptcy Code not apply to FDIC bank assistance packages given under Section 13(c) of the Federal Deposit Insurance Act."). Second, JPMC does not (and cannot) explain, how the assertion of avoidance actions against JPMC as subsequent transferee implicates or "circumvents" section 1821(d)(11)(B) governing "[d]epositor preference" and/or "FIRREA's statutory regime." Section 1821(d)(11)(B) of the FDI Act provides that the priority "waterfall" provided for in section 1821(d)(11)(A)²⁰ shall "supersede the law of any State [where] inconsistent." That subsection provides that equity holders are to be paid last, after administrative expenses, depositors, and general creditors, from "***amounts realized from the liquidation or other resolution of any insured depository institution***" by the receiver. In a strained effort to conjure up a conflict with the FDI Act, JPMC is apparently insinuating that if WMI's Counterclaims succeed in obtaining a judgment against it, simply because WMI is the

²⁰ 12 U.S.C. § 1821(d)(11)(A) provides: "Subject to section 1815 (e)(2)(C) of this title, amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority: (i) Administrative expenses of the receiver. (ii) Any deposit liability of the institution. (iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)). (iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)). (v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company)."

shareholder of WMB, any recovery would be in violation of the FDI Act's depositor preference scheme. This position is impossible to reconcile with the statute, the case law cited by JPMC, or the facts at bar, and therefore, there is no conflict with the FDI Act.

First, as recognized by the Bankruptcy Court, the Counterclaims being asserted in the Adversary Proceedings are against JPMC, not the FDIC. (Tr. 6/24/09 at 93, "I do not find FIRREA is a jurisdictional bar to the debtors' claims to property that is no longer in the hands of the FDIC as receiver, but are in the hands of JPMC. I think that's clear from the Third Circuit law, which is binding on this Court.")²¹ Thus, any recoveries on account of the Counterclaims would not be "realized from the liquidation or other resolution of any insured depository institution" and would plainly not implicate the FDI Act's depositor preference.²²

Second, the two cases cited by JPMC are plainly inapposite. Both cases concern "takings" claims asserted against the United States government.²³ In the Adversary Proceedings, the Debtors have not sought "compensation" for the seizure of WMB. Rather, they are asserting

²¹ As further evidence, in *Rosa v. R.T.C.*, 938 F.2d 383 (3d Cir. 1991), the Court of Appeals for the Third Circuit considered the merits of a claim for monetary damages asserted against a successor bank. *Id.* at 397-400. While the court reversed the injunction ordering such claims paid (solely because the successor bank was in conservatorship), it raised no issue as to whether recovery by the (non-depositor) plaintiffs would threaten to circumvent Title 12's depositor preference doctrine. The plaintiffs in *Rosa* were not bank shareholders, and perhaps bank creditors, however, they would have been junior to those owed deposit liabilities and, under JPMC's theory, their recovery would have been in conflict with the FDI Act. *See* 12 U.S.C. §1821(d)(11)(A).

²² Even if the Counterclaims were being asserted against the FDIC in the Adversary Proceedings – which they are not – JPMC cites no bar (under the FDI Act or otherwise) against parent companies asserting claims against their failed financial institution subsidiaries and recovering on account of such claims. In this instance, the parent company would not recover on account of an "obligation arising as a result of their status as shareholders or members," *see* 12 U.S.C. §1821(d)(11)(A), and, just as in bankruptcy (absent subordination), there would be no violation of absolute priority.

²³ In *Branch v. United States*, 69 F.3d 1571 (Fed. Cir. 1995), the court held that the FDIC's seizure of the plaintiff trustee's bank as a result of FIRREA's cross-guarantee provision did not constitute an uncompensated taking in violation of the U.S. Constitution. *Id.* at 1583; *California Housing Secur., Inc. v. United States*, 959 F.2d 955 (Fed. Cir. 1992) (same); *Golden Pac. Bancorp v. United States*, 15 F.3d 1066 (Fed. Cir. 1994) (same).

claims for constructive fraudulent transfer against JPMC as subsequent transferee, as provided to the Debtors under the Bankruptcy Code and state law as transferors of property to, or creditors of, WMB. Given the obvious distinction, any FDI Act implications discussed in those cases would not be considered by the Bankruptcy Court in resolving the Counterclaims asserted against JPMC. Thus, JPMC's assertion that the Debtors' Counterclaims seek to circumvent the depositor preference provision is totally unfounded. In fact, resolution of the Counterclaims will not require the Bankruptcy Court to interpret, apply, or even consider the FDI Act's depositor preference provision.

Moreover, even if the Counterclaims did implicate the FDI Act's depositor preference in a material and substantial manner, the Bankruptcy Court is uniquely-suited to apply such law. After all, a bankruptcy court is well skilled at interpreting and applying priority schemes of distribution – a function it performs regularly. *See, e.g.*, 11 U.S.C. §§ 507, 1129.

JPMC's next "reach" for FDI Act implications is nothing less than frivolous. JPMC asserts that WMI's Counterclaims "raise specific issues regarding the federal regulatory scheme that governs the treatment of regulatory capital." (Motion at 21.) As the lone "example" of this purported implication, JPMC cites section 1828(u) of Title 12 (section 18(u) of the FDI Act). However, JPMC is only able to make this assertion by blatantly mischaracterizing the terms of the cited provision. As excerpted by JPMC, section 1828(u)(1) prohibits:

[C]laims[s] against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer (Motion at 21.)

However, the very next passage – a passage that JPMC avoids quoting through the strategic placement of an ellipses – provides that this bar applies only if, "at the time of the transfer (A) the insured depository institution is subject *to any direction issued in writing by a Federal banking agency to increase its capital . . .*" 12 U.S.C. § 1828(u) (emphasis added). JPMC offers nothing to indicate that WMB was operating under any such direction (which it was not), choosing instead to ignore this requirement simply by omitting the pertinent, operative statutory language from its brief. Without this convenient omission, it is clear that section 1828(u), by its express terms, is inapplicable to the Counterclaims and that JPMC's reference to "Section 1828(u)'s bar" is of no substance and must therefore be discarded.

Section 1828(u) also does not apply for the additional reason that it expressly applies only to "claim[s] against any Federal banking agency" 12 U.S.C. § 1828(u). As discussed, Debtors' Counterclaims are not against the FDIC. Rather, they are against JPMC, a transferee of assets of an insured depository institution.

2. *Adjudication of Ownership of Disputed Assets Will Not Require Substantial and Material Consideration of Federal Banking Laws*

JPMC claims that "[b]anking law issues permeate the disputes concerning WMI's assertion that it is entitled to certain assets arising out of or utilized in connection with the banking operations of WMB" such that the "reference must be withdrawn given the nature of the counterclaims asserted." (Motion at 21.) Specifically, JPMC refers to the right to Tax Refunds, the Deposits, the Trust Securities, and certain Intellectual Property claims. The Debtors address each in turn below, but as a threshold matter, with respect to the Tax Refunds, the Trust Securities, and the Deposits, it must be remembered that it was JPMC itself that filed the JPMC Adversary Proceeding, which specifically invoked the Bankruptcy Court's jurisdiction to adjudicate these very issues. (JPMC Adversary Complaint at Counts 1-8.) While JPMC may be

dissatisfied with the Bankruptcy Court's rulings to date, this dissatisfaction is no basis for sweeping under the rug JPMC's very own admissions that these issues are properly before the Bankruptcy Court. And, it is even more disingenuous for JPMC to now suggest that it was the Debtors' Counterclaims, rather than JPMC's affirmative claims, that cause it to seek withdrawal of the reference when JPMC does not limit its argument asserted in the Motion to the Counterclaims. (Motion at 23).

Further, with respect to all of the asset ownership disputes, JPMC fails to identify any potential conflict between provisions of Title 11 and the identified statutes and regulations it sprinkles in its Motion. In *Hassett v. BancOhio Nat'l Bank (In re CIS Corp.)*, 172 B.R. 748 (S.D.N.Y. 1994), a bankruptcy trustee asserted, among other things, declaratory judgment and turnover actions concerning various assets against a banking entity defendant that pointed to banking statutes and regulations as grounds for withdrawal of the reference. The district court found that the existence of interplay between Title 11 and banking statutes is both commonplace and insufficient; "unless it desires evisceration of Title 11, [movant-bank] can hardly suggest that this Court is required to withdraw the reference in order to scrutinize whether there *might* be a conflict between the federal law and Title 11 when it has not identified the substance of conflict." *Id.* at 754. For the same reasons, as discussed in more detail below, JPMC's Motion provides insufficient grounds to warrant withdrawal of the reference.

(a) Debtors' Deposit Accounts

Turnover of the Debtors' Deposits are a core proceeding specifically provided for in the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(E) ("orders to turn over property of the estate"); 11 U.S.C. § 542(b) ("an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee"). Although JPMC now claims resolution of the Turnover Action will implicate issues of

federal banking law, it does not support this assertion with a showing that the Bankruptcy Court will be required to "meaningfully consider" any banking laws, let alone banking laws of "first impression" or that "sharply conflict" with Title 11.

First, JPMC claims that the factual circumstances surrounding the pre-petition transfer of the Debtors' Deposits from WMB to WMB fsb "raises material issues under the banking laws." (Motion at 27.) Significantly, however, JPMC raised none of these purported issues in its motion to dismiss the Turnover Action, its reply to the Debtors' opposition, or at oral argument at the June 24 Hearing (even though this Motion was filed prior to the hearing). Now, in support of the Motion, JPMC cites to Sections 23A and 23B of the Federal Reserve Act which primarily govern credit extended by a bank to its an affiliate. However, the Deposits represent credit extended by the Debtor (the depositor) to its subsidiary banks, WMB or WMB fsb, not the other way around.²⁴ Thus, JPMC raises another red herring.

To the extent JPMC asserts that an intercompany loan made from WMB fsb to WMB *subsequent* to the transfer of Deposits implicates banking law, it also misses the point – whether the loan between WMB fsb and WMB was in violation of the statute is irrelevant to the Debtors' Turnover Action and to whether the Deposit liabilities were transferred to, and assumed by, WMB fsb. This is because the Deposits held at *both banks* were assumed by JPMC and the

²⁴ The Board of Governors of the Federal Reserve System summarize Sections 23A and 23B of the Federal Reserve Act as follows: "Sections 23A and 23B and Regulation W limit the risks to a bank from transactions between the bank and its affiliates and limit the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net (i.e., lower cost insured deposits, the payment system, and the discount window). The statute and rule accomplish these purposes by imposing quantitative and qualitative limits on the ability of a bank *to extend credit to*, or engage in certain other transactions with, an affiliate." *See* <http://www.federalreserve.gov/boarddocs/SRLETTERS/2003/sr0302.htm#Footref> (emphasis added); *see also* 12 U.S.C. § 371c(b)(7) (defining a "covered transaction" to include "a loan or extension of credit to the affiliate", certain purchases of assets or securities from an affiliate, accepting the securities of an affiliate as collateral and "the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate").

Bankruptcy Court will not have to afford meaningful consideration to these inapplicable – and largely irrelevant – banking statutes. Thus, even if the prepetition transfer was unwound, the outcome would be the same – JPMC is liable for the Debtors' Deposits. In any event, JPMC fails to carry its burden of showing that anything more than straightforward application or routine interpretation of federal banking law will be necessary to adjudicate the Debtors' claims to their Deposits.

Second, JPMC raises the specter of whether the "credits" in the Deposit accounts represent liabilities owed the Debtors (which the Debtors have clearly shown to be the case in their summary judgment motion), or "capital" or other amounts that do not belong to the Debtors because they were sold to JPMC pursuant to the P&A Agreement. (Motion at 28.) Putting aside its lack of merit, what JPMC's assertion boils down to is that the Bankruptcy Court will need to interpret banking law in order to determine if the Deposits transferred to JPMC under the P&A Agreement represented debt or equity of WMB. In *BancOhio*, the district court was faced with an analogous situation. There the movant-defendant bank and the trustee-plaintiff were engaged in a dispute over certain transactions and whether, pursuant to such transactions, assets should be properly deemed sold or simply pledged to the bank. *BancOhio*, 172 B.R. at 752. The bankruptcy trustee argued that the National Bank Act, the Competitive Equality Banking Act, and certain related regulations issued by the Comptroller of the Currency all mandated that the transaction be found to be a loan and not a sale. *Id.* at 753. The defendant bank applied to the district court to withdraw the reference, claiming that the trustee's claims (as JPMC claims with respect to the Adversary Proceedings) "infuse the case with issues which will require the bankruptcy court to substantially interpret these [banking] statutes and regulations . . . [and] that the court will be required to examine the purpose underlying the laws and regulations and the

interplay of the statutes and regulations with various provisions of Title 11." *Id.* The district court found that resolution of the trustee's claims would not require any more than "straightforward application" or "routine interpretation" of the various banking laws raised by the trustee. *Id.* In so finding, the court rejected the movant-bank's "sweeping conclusion that significant interpretation of the statutes and regulations and their underlying policy considerations is compelled," finding that the bank failed to "explain why that must be so or offer the slightest support for its conclusion." *Id.* The district court's description is squarely applicable to JPMC's Motion.

Further, such debt versus equity determinations are within the Bankruptcy Court's bailiwick as it is required to make such determinations in almost every chapter 11 case. *See U.S. v. State Street Bank and Trust Co.*, 303 B.R. 35, 38 (Bankr. D. Del. 2003) (proceeding to factual determination if debtor-creditor relationship exists or corporation-shareholder relationship exists); *Moglia v. Quantum Industrial Partners, LDC (In re Outboard Marine Corp.)*, 2003 WL 21697357 (N.D. Ill. July 21, 2003) (reaffirms the broad expanse of a bankruptcy court's powers to inquire into the substance of a creditor's claim to determine whether it should be allowed on a par with other legitimate debts or treated as equity interests); *see also* 11 U.S.C. §501 (providing for the filing of claims and interests). Again, JPMC fails to explain how the Bankruptcy Court will be faced with "meaningful consideration" of federal banking laws and therefore fails to carry its burden.

Finally, JPMC's claims that the FDIC has "reserved its right to require that accounts such as these be turned over to the receivership estate pursuant to Section 9.5 of the P&A Agreement" should be afforded no weight by this Court. First, as discussed below, the lion's share of the Deposits (*i.e.*, more than \$3.7 billion out of \$4 billion) was not in receivership and thus was not

transferred under the P&A Agreement. Thus, any rights the FDIC may have under Section 9.5 are inapplicable and therefore irrelevant to substantially all of the Debtors' Deposits. Second, it is undisputed that with respect to the remainder of the Deposits, the FDIC has not purported to exercise such rights in the more than nine months since the time of the P&A Transaction and the Debtors' Petition Date. *See* Tr. June 24 Hearing at 44 (FDIC Counsel: "We have not asserted that 9.5 right. Because we do not want to interfere with the administration of this bankruptcy case."). JPMC cannot carry its burden of persuasion based upon a contingent implication of a contractual provision that, even if invoked, would raise a matter of contract, not bank regulatory law. *See Matter of Vicars Ins. Agency, Inc.*, 96 F.3d 949, 954 (7th Cir. 1996) ("Motions to withdraw the reference cannot rest on speculative and completely hypothetical contentions that federal claims might involve novel issues.") (quotations omitted); *Continental Airlines*, 138 B.R. at 447 (refusing to grant motion to withdraw reference based on "speculation about [non-Title 11 federal law] which may or may not arise . . . [because] would be inconsistent with the purposes underlying the very existence of the Bankruptcy Court and would encourage forum shopping in a manner Congress disdained when it sought to avoid"). Notably, even if the FDIC were to invoke such rights, rather than being faced with a federal banking law issue, JPMC would be required to present to the Bankruptcy Court a motion seeking relief from bankruptcy's automatic stay. *See Gross v. Bell Savings Bank PA SA*, 974 F.2d 403 (3d Cir. 1992) (noting that injunctive relief, such as bankruptcy's automatic stay, "is appropriate [with respect to the FDIC] where that remedy is imposed by statute, automatically and by operation of law, without any action by a court.")

(b) Tax Refunds

The case law teaches that a bankruptcy court "is indeed an appropriate forum in which to determine the competing rights of parties in a tax refund resulting from a consolidated return,

where one of the parties is a debtor in bankruptcy." *In re Fairchild Aircraft Corp.*, 126 B.R. 717, 720 (Bankr. W.D. Tex. 1991). The reason for this rule is obvious: to issue a ruling with respect to the Tax Refunds, the Bankruptcy Court will not need to engage in substantial and material consideration of federal banking law. A review of a directly on-point decision, concerning the exact same issues as between the Debtor and JPMC is perhaps the best evidence that any application of non-bankruptcy federal law will be, at best, a "simple application" of such law, insufficient to warrant withdrawal.

In *United States v. MCorp Fin. (In re MCorp Fin)*, 170 B.R. 899 (S.D. Tex. 1994), just as here, a chapter 11 debtor parent company filed consolidated tax returns for itself and its subsidiaries, including certain banking subsidiaries seized by the FDIC. *Id.* at 899. Also, just as is the case with WMI, the debtor had received some of the anticipated tax refund, but claimed significantly more from the IRS. *Id.* at 900. Just as with WMI, the debtor sought the tax refunds so that it could fund an initial plan distribution. *Id.* Bank One (here, JPMC),²⁵ the banking entity that had purchased the debtor's banking subsidiary's assets and assumed its liabilities filed a claim in the debtor's bankruptcy case for the tax refund. *Id.* Bank One claimed that the refund money "was never and never should have been considered property of the [debtors'] estates." *Id.* The court analyzed the tax allocation agreement²⁶ between the debtor and its subsidiary bank as well as the purchase agreement between Bank One and the FDIC. *Id.* at 901-03. Ultimately, the court determined that the tax allocation agreement created "a debtor-creditor relation, which is the quintessential business of bankruptcy." *Id.* at 902. The court rejected Bank One's claim that the tax refunds were held in trust for its benefit, finding that "the equities of unjust enrichment do

²⁵ Incidentally, Bank One was previously subsumed into JPMC via reverse merger.

²⁶ WMI and WMB are party to a similar tax sharing agreement.

not appear between a post-bankruptcy purchaser out of a receivership and the creditors of the estate." *Id.* at 902. The closest federal banking issue the court had to consider was a review of the "standard" purchase and assumption agreement used by the FDIC in order to determine if Bank One had purchased the right to tax refunds (the court found that it had not). *Id.* at 902-03. The opinion contains no cites to the FDI Act. Thus, it is clear that for the Bankruptcy Court to resolve the issue of the Tax Refunds, it will not be faced with "meaningful consideration" of the federal banking laws. Moreover, in light of *MCorp*, JPMC cannot seriously contest that the Bankruptcy Court will have to consider an issue that may be characterized as one of "first impression" or "sharply in conflict" with the Bankruptcy Code. *See In re Continental Airlines*, 138 B.R. 442.²⁷

In support of the proposition that payments from a tax group filing parent company should be no less favorable to the subsidiary than if the banking subsidiary had filed separately, JPMC cites to a policy statement and a handbook: the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure and the OTS's Holding Companies Handbook. (Motion at 24-5). Both "authorities" contemplate going concern situations as between holding companies and their bank subsidiaries, distinct from the circumstances at bar. First, as between WMI and JPMC, a parent company and the purchaser of its subsidiary bank's assets, such "law" is simply inapplicable. Second, as discussed in *MCorp*, any equitable basis by which JPMC could possibly assert a trust or priority claim to the Tax Refunds will not trump bankruptcy's

²⁷ In sharp contrast, both cases cited by JPMC in which the court withdrew the reference concerned issues of first impression. *See United States v. G-I Holdings, Inc. (In re G-I Holdings, Inc.)*, 295 B.R. 222, 223 (D.N.J. 2003) (finding that resolution of case required "interpretation of first impression because neither party, nor the Court could find any case law directly interpreting 26 U.S.C. § 707(a)(2)(B)"); *In re CM Holdings, Inc.* 221 B.R. 715 (D.Del. 1998) (determination required adjudication of two "unsettled tax issues of first impression which require substantial and material consideration of the federal tax law.").

fundamental principal of equal treatment of creditors. Thus, the Bankruptcy Court will not need to meaningfully consider such issues.

Furthermore, assuming, *arguendo*, that the federal banking law raised by JPMC requires consideration that certain Tax Refund assets be held in trust for the benefit of WMB or its assignee, bankruptcy courts are very experienced with claimants seeking to avoid the debtor-creditor classification, asserting arguments that property is held in trust for their benefit. *See In re Flanagan*, 503 F.3d 171, 180-81(2d Cir. 2007) ("The effect of a constructive trust in bankruptcy is profound. While the bankruptcy estate is defined very broadly under § 541(a)(1) of the Bankruptcy Code to include all legal or equitable interests of the debtor, any property that the debtor holds in constructive trust for another is excluded from the estate pursuant to § 541(d)"); *Stanziale v. Rite Way Meat Packers, Inc. (In re CFP Liquidating Estate)*, 2009 Bankr. LEXIS 1536 (Bankr. D. Del. May 21, 2009) ("In the context of bankruptcy, if a trust exists, 11 U.S.C. § 541(d) excludes those assets in the trust from a debtor's estate"); *Asurion Ins. Servs. v. Amp'd Mobile, Inc. (In re Amp'd Mobile, Inc.)*, 377 B.R. 478, 490 (Bankr. D. Del. 2007) (rejecting creditor request for imposition of a constructive trust); *EBS Pension, L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 268 B.R. 409 (Bankr. D. Del. 2001) (Walrath, J.) (same).²⁸ Moreover, to the extent the issue of the Debtors' tax sharing agreement with WMB becomes relevant to adjudication of the Tax Refunds, the Bankruptcy Court is uniquely skilled in

²⁸ Further, bankruptcy courts have frequently adjudicated issues of competing claims among members of a consolidated tax groups. *See, e.g., Oakridge Consulting, Inc. v. United States (In re Consol. FGH Liquidating Trust)*, 325 B.R. 564, 568 (Bankr. S.D. Miss. 2005) (interpreting Treas. Reg. 1.1502-77(a), holding that the former parent corporation was the only agent authorized to act in matters relating to the tax liability for the consolidated return years); *Superintendent of Ins. v. First Cent. Fin. Corp. (In re First Cent. Fin. Corp.)*, 269 B.R. 481, 502 (Bankr. E.D.N.Y. 2001) (interpreting tax sharing agreement to allocate tax refunds among consolidated tax group finding no basis for constructive trust); *Nisselson v. Drew Indus. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 423 (Bankr. S.D.N.Y. 1998) (discussing affiliated tax group filing and allocation of NOLs).

assessing the impact of executory contracts. *See* 11 U.S.C. §365 (concerning the assumption, assignment, and rejection of executory contracts and unexpired leases). Thus, the Tax Refunds do not warrant withdrawal of the reference, because the Bankruptcy Court will not be required to engage in anything more than a familiar, straightforward application of law, far from engaging in a complex interpretation of non-Title 11 federal law.

(c) Trust Securities

In its Motion, JPMC allocates three sentences to certain Trust Securities (the "Trust Securities"), issued between March 2006 and October 2007, by certain special purpose entities associated with WMI and its then subsidiaries. JPMC and the Debtors both assert ownership interests in the Trust Securities. Because the Trust Securities were treated by WMB as core capital for regulatory capital purposes, JPMC claims that the Bankruptcy Court will be called on to "consider the effect of the OTS's capital adequacy regulations and the standards imposed under 12 U.S.C. § 1464(s), (t)." JPMC's conclusory, unsupported statement constitutes insufficient grounds to require withdrawal of the reference.

First, the Debtors have asserted Counterclaims to recover the Trust Securities, or the value of the Trust Securities, from JPMC as transferee of preferential or constructively fraudulent transfers – *i.e.*, core bankruptcy avoidance actions. With respect to the preference Counterclaim, brought pursuant to section 547 of the Bankruptcy Code, the Bankruptcy Court will be required to determine, among other things, if any transfer of the Trust Securities to WMB was made in satisfaction of an "antecedent debt owed by the debtor before such transfer was made." *See* 11 U.S.C. § 547. With respect to the fraudulent transfer Counterclaim, brought pursuant to section 548 of the Bankruptcy Code, the Bankruptcy Court will be required to determine, among other things, if any transfer of the Trust Securities to WMB was made in exchange for "reasonably equivalent value." *See* 11 U.S.C. § 548. These are determinations that

are commonplace for the Bankruptcy Court and fall easily within its expertise. *See OHC Liquidation Trust v. Am. Bankers Ins. Co. (In re Oakwood Homes Corp.)*, 2005 Bankr. LEXIS 429 (Bankr. D. Del. Mar. 18, 2005) ("a preference action under § 547 is clearly a core proceeding . . . as are fraudulent conveyance actions under §§ 544(b) and 548 . . . " and because the avoidance actions "are creatures of [Bankruptcy Code] statute").

Sections 1464(s) and (t), provisions of the Home Owners' Loan Act²⁹ concerning "Minimum capital requirements" and "Capital Standards" of savings associations, will not significantly impact the Bankruptcy Court's resolution of the Debtors' Counterclaims. The fact that Congress may have granted the OTS power to issue regulations and make determinations concerning the operations of savings institutions and to require savings associations to achieve and maintain adequate capital only paints the background picture as to what may have given rise to a purported obligation on the part of WMI to contribute the Trust Securities to WMB. As with all preference and fraudulent transfer claims, such an obligation would only be relevant to the Debtors' Counterclaims in determining if any purported transfer of the securities was made in satisfaction of an antecedent obligation, a necessary element of any preference avoidance action, or if not, was made for less than reasonably equivalent value, an element of the Debtors' constructive fraudulent transfer claim. Either way, the Bankruptcy Court is more than able to determine what constitutes an "antecedent debt" or whether satisfaction of any such debt yields "reasonably equivalent value." *See Argus Mgmt. Group v. Gab Robins, Inc. (In re CVEO Corp.)*, 327 B.R. 210, 215 (Bankr. D. Del. 2005) (reserving the issue for trial as to whether debtor's transfers were on account of antecedent debt); *Pardo v. Gonzaba (In re APF Co.)*, 308 B.R. 183, 187 (Bankr. D. Del. 2004) (addressing constructively fraudulent transfers and finding transfers in

²⁹ The Home Owners' Loan Act is the statute under which WMB was chartered.

satisfaction of antecedent debt were made for value). In neither instance will the Bankruptcy Court be required to meaningfully consider the FDI Act provisions cited to in the Motion, and JPMC fails to explain otherwise, because it cannot. Furthermore, JPMC, who effectively asserts only the mere existence of such provisions, does not allege that they conflict with application of the Bankruptcy Code. Merely citing statutory provisions is insufficient to warrant withdrawal of core bankruptcy avoidance actions.³⁰

(d) IP Claims

With respect to the IP Counterclaims, in which the Debtors assert that JPMC has infringed upon certain WMI intellectual property assets, JPMC insufficiently asserts that the resolution of the Debtors IP Counterclaims will require "substantial and material" consideration of banking laws. JPMC states that "banking laws make clear . . . that the FDIC is expressly authorized to 'transfer any asset or liability of the institution in default . . . without any approval, assignment, or consent with respect to such transfer.'" (Motion at 26 *citing* 12 U.S.C. § 1821(d)(2)(G)(II).) Notwithstanding JPMC's sweeping statement, at best it is only tangentially relevant whether or not the FDIC had the authority to transfer intellectual property licenses. Rather, the issue before the Bankruptcy Court will be whether the licenses terminated and thus were not an "asset of the institution in default" and whether the intellectual property licenses or underlying trade marks at issue were property of the Debtors' estate upon the closure of WMB. The Bankruptcy Court is more than able to make such a determination. *See Krebs Chrysler-Plymouth v. Valley Motors, Inc.*, 141 F.3d 490 (3d Cir. 1998) ("Trademarks are property, and

³⁰ Furthermore, to the extent the Bankruptcy Court is required to evaluate the nature of any commitment on the part of WMI to contribute the Trust Securities to WMB, it will more likely be required to consider section 365(o) of the Bankruptcy Code. *See* 11 U.S.C. § 365(o) (concerning a "commitment by the debtor to a Federal depository institutions regulatory agency"). The Bankruptcy Court is clearly the right court to make such a determination given that it will be applying and considering a Bankruptcy Code provision and the standards developed thereunder.

franchises are licenses to use such property. Thus, under [state] law, these franchises are interest in property, and as such are property of the estate under section 541 [of the Bankruptcy Code]."); *Continental Airlines*, 138 B.R. at 445 ("The determination of what constitutes property of the bankruptcy estate is inherently an issue to be determined by the bankruptcy court."). As the *Continental* court found, without a "persuasive showing" that the Bankruptcy Court will need to consider federal banking laws to determine whether such licenses are property of the estate, the court "cannot conclude that the Bankruptcy Court is stepping into the realms of difficult federal law outside of the Bankruptcy Code in determining the property of the estate." *Id.* at 445. JPMC has clearly not carried its burden of persuasion with respect to the IP Counterclaims in that it has not presented a need for the Bankruptcy Court to "substantially and materially" consider federal banking law in connection therewith.

C. The Bankruptcy Court Has Already Considered, and Ruled Inapplicable, the FDI Act's Jurisdictional Bar

JPMC's argument that withdrawal of the reference is mandated because the Bankruptcy Court will have to consider the FDI Act's jurisdictional bar (12 U.S.C. § 1821(d)(13)(D)) is foreclosed by the Bankruptcy Court's ruling at the June 24 Hearing. In its ruling denying the FDIC's and JPMC's motions to stay the Adversary Proceedings, the Bankruptcy Court unequivocally held that the jurisdictional bar set forth in section 1821(d)(13)(D) does not apply to Debtors' Counterclaims against JPMC. The Court explained its holding:

I do not find FIRREA is a jurisdictional bar to the Debtors' claims to property that is no longer in the hands of the FDIC as receiver, but [is] in the hands of JPMC. I think that's clear from the Third Circuit precedent, which is binding on this Court. *Hudson* made clear that FIRREA only bars claims against a receiver or an institution in receivership.

(Tr. 6/24/09 at 93.) Thus, the "substantial issue as to whether FIRREA's jurisdictional limitations prevent WMI from asserting the counterclaims" raised by JPMC (Motion at 32) has already been resolved, and it, by definition, cannot constitute grounds to withdraw the reference.

Any attempt by JPMC to re-argue the issue before this Court would violate the law of the case doctrine and constitute an improper collateral attack on the Bankruptcy Court's ruling. The law of the case doctrine "limits relitigation of an issue once it has been decided" in an earlier stage of the same litigation. *In re Continental Airlines, Inc.*, 279 F.3d 226, 232 (3d Cir. 2002); *see Fagan v. City of Vineland*, 22 F.3d 1283, 1290 (3d Cir. 1994) ("The law of the case doctrine limits the extent to which an issue will be reconsidered once the court has made a ruling on it."). As the Third Circuit has emphasized, the law of the case doctrine promotes finality, consistency, and judicial economy. *In re City of Philadelphia Litig.*, 158 F.3d 711, 717-18 (3d Cir. 1998). In light of these considerations, courts "should be loathe" to revisit issues that have already been decided "in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'" *Lambert v. Blackwell*, 387 F.3d 210, 237 (3d Cir. 2004) (quoting *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 817 (1988)). Similarly, a "collateral attack" is a "tactic whereby a party seeks to circumvent an earlier ruling of one court by filing a subsequent action in another court." *Pratt v. Ventas, Inc.*, 365 F.3d 514, 519 (6th Cir. 2004). The long-standing bar on using this tactic stems from the need for federal court orders to carry the full force of law unless and until they are reversed on appeal. *See, e.g., AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.)*, 117 B.R. 789, 797 (Bankr. S.D.N.Y. 1990) ("The rationale underlying the bar against collateral attack is twofold: (1) that there be finality to matters administered by the judicial system; and (2) that the integrity of the appellate procedure is not circumvented."). In *Celotex Corp. v. Edwards*, 514 U.S. 300

(1995), the Supreme Court strongly rebuked a party's attempt to collaterally attack a bankruptcy court order in a different federal court, noting that if the parties were "dissatisfied with the Bankruptcy Court's ultimate decision," then they should follow the appellate procedures in 28 U.S.C. § 158. *See id.* at 313. The parties' choice "not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's [order]" threatened to "seriously undercut[] the orderly process of the law." *Id.* Simply put, JPMC cannot get two bites at the section 1821(d)(13)(D) apple.

Therefore, JPMC is precluded from invoking the same jurisdictional provision that it invoked previously, and that the Bankruptcy Court found inapplicable, as a basis for the Court to withdraw the reference.³¹

II. PERMISSIVE WITHDRAWAL IS NOT WARRANTED

In the alternative, JPMC argues that permissive withdrawal of the reference is appropriate based upon the assumptions that (i) the Court will transfer these proceedings to the District Court for the District of Columbia; (ii) the District Court for the District of Columbia will consolidate these proceedings with the DC Action; and (iii) transferring the proceedings from the better-equipped and faster-paced Bankruptcy Court "is efficient and desirable." (Motion at 35-36.)

First, JPMC's assumption that the Adversary Proceedings will be transferred has already been foreclosed by the Bankruptcy Court. Specifically, as discussed above, JPMC has already argued (unsuccessfully) in its papers and at the June 24 Hearing that the Adversary Proceedings should be transferred to the District Court for the District of Columbia. For centuries it has been

³¹ All the cases relied upon by JPMC are therefore inapposite because in each of those cases, the Court had not yet considered, let alone reviewed briefing and issued a ruling on, the FDI Act jurisdictional bar issue. In contrast, here JPMC deliberately chose to fight that battle first and then move to withdraw the reference after fully briefing its motion to stay and motion to dismiss the Turnover Action and partially briefing its motion to dismiss the Debtors' Counterclaims.

"[a] fundamental precept of common-law adjudication . . . that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies.'" *Montana v. United States*, 440 U.S. 147, 153 (1979) (quoting *Southern Pac. Ry. Co. v. United States*, 168 U.S. 1, 48-49 (1897); alteration omitted). Given the Bankruptcy Court's rejection of JPMC's motion to transfer or stay the Adversary Proceedings, JPMC is now barred from seeking transfer of the Adversary Proceedings by the doctrine of issue preclusion. Therefore, its arguments concerning efficiency in connection with permissive withdrawal of the reference rest upon an invalid basis.

Second, even assuming, *arguendo*, that JPMC could succeed in having the Adversary Proceedings transferred and consolidated with the DC Action, JPMC fails to overcome the presumption in favor of the Bankruptcy Court retaining jurisdiction over these core proceedings. As the moving party, JPMC carries the burden of demonstrating "cause" sufficient to overcome "presumption that Congress intended to have bankruptcy proceedings adjudicated in bankruptcy court, unless rebutted by contravening policy." *In re Oakwood Homes Corp.*, Civil Action No. 06-436-JJF, 2007 WL 2071730, at *2 (D. Del. July 17, 2007) (internal quotation omitted); *In re IT Group, Inc.*, No. 02-10118 MFW, 2007 WL 211179, at *1 (D.Del. Jan. 26, 2007). The Third Circuit has set forth five factors that a district court should consider in determining whether "cause" exists for discretionary withdrawal: (1) promoting uniformity of bankruptcy administration; (2) reducing forum shopping and confusion; (3) fostering economical use of debtor/creditor resources; (4) expediting the bankruptcy process and (5) timing of the request for withdrawal. *In re Pruitt*, 910 F.2d at 1168.

Before assessing these factors, however, the Court "should first evaluate whether the claim is core or non-core, since it is upon this issue that questions of efficiency and uniformity

will turn". *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2nd Cir. 1993), cert. dismissed, 511 U.S. 1026, 114 S.Ct. 1418. *See also In re Davis*, Bankr. No. 06-11746, Adversary No. 06-287, 2006 WL 3392167, at *2 (E.D.Pa. Nov. 20, 2006) ("in determining whether cause is shown, courts generally begin by considering the threshold question of whether the matters to be withdrawn are 'core' or 'non-core' to the bankruptcy case"); *In re Westmoreland Coal Co.*, 221 B.R. 512, 514-5 (D. Colo. 1998) ("the principle inquiry is whether the claim involves core or noncore bankruptcy proceeding"). Thus, where the matters are core proceedings, many of the *Pruitt* factors will weigh in favor of the Bankruptcy Court resolving the case.

In this case, the consideration of whether the proceedings are core or non-core and the abovementioned *Pruitt* factors overwhelmingly support the denial of the Motion.

A. The Core Nature of the Adversary Proceedings and Related *Pruitt* Factors Militate Against Withdrawal

Significantly, JPMC "does not object to the characterization of the Adversary Proceedings as core proceedings under 28 U.S.C. § 157(b)" for purposes of its motion. (Motion at 37). Indeed, JPMC consents to this characterization because, as discussed above, the Turnover Action, the myriad avoidance actions, the actions to determine property of the estate, the disallowance of bankruptcy claims, among other claims, are all expressly statutorily-deemed core proceedings. *See* 28 U.S.C. § 157(b). The Bankruptcy Court is best equipped to handle such core proceedings, which lie at the heart of the Bankruptcy Court's exclusive jurisdiction and unique expertise, so as to "foster efficient use of judicial resources, promote uniformity in bankruptcy administration, and avoid confusion." *In re IT Group, Inc.*, 2007 WL 211179, at *2; *see also In re Am. Classic Voyages Co.*, 337 B.R. 509, 512 (D.Del. 2006) ("because it is a core proceeding with which the Bankruptcy Court is already familiar, the continued handling of the matter by the Bankruptcy Court would foster efficient use of judicial resources, promote

uniformity in bankruptcy administration, and avoid confusion"); *In re Winstar Communications, Inc.*, Civ.A.04-928-JJF, 2004 WL 2713101, at *4 (D.Del. Nov. 16, 2004) (maintaining bankruptcy-related claims affecting distribution to creditors in the bankruptcy court "will diminish the risk of forum shopping and will lessen confusion by fostering consistent administration of the estate").

The Adversary Proceedings – including the Turnover Action in which Debtors seek to recover approximately \$4 billion in deposits – not only are "core" proceedings, but also are essential to the administration of the Debtors' estates and integral to the chapter 11 restructuring of debtor-creditor rights, thus going to the very foundation of federal bankruptcy power. *See, e.g., Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982); *Oakwood Homes*, 2007 WL 2071730, at *2 (denying motion to withdraw reference where "considerations of uniformity in bankruptcy administration support the proceeding being heard in the Bankruptcy Court, because the Adversary Proceeding is a core proceeding that is integral to the restructuring of debtor-creditor rights"). Therefore, the core nature of the proceedings and the related *Pruitt* factors – including promoting uniformity in bankruptcy administration, avoiding confusion, fostering the economical use of limited debtor and creditor resources, and expediting the bankruptcy process – strongly militate against withdrawal of the reference.

B. Withdrawal of the Reference Will Not Expedite The Debtors' Chapter 11 Bankruptcy Case

Furthermore, it cannot be disputed that transferring the Adversary Proceedings and consolidating them with the DC Action will "disrupt the progress of the case by slowing reorganization efforts." *See Smith Corona*, 205 B.R. at 716 (declining to withdraw reference of core claims "more prudently left to the experience of the Bankruptcy Court"); *see also Continental Airlines*, 138 B.R. at 447-8 (finding no cause to withdraw the reference because

"withdrawal may slow down the bankruptcy process or create confusion" and the "Bankruptcy Court would need to delay any action relating to the assets of the estate until this issue is resolved by this Court"). *First*, the DC Action is far less developed – the FDIC answered the Debtors' complaint less than one month ago. Here, by contrast, the parties have appeared before the Bankruptcy Court multiple times in both Adversary Proceedings. In the Turnover Action, the Debtors have survived JPMC's motion to dismiss, have filed their Motion for Summary Judgment of the Turnover Action, and JPMC has answered the Debtors' complaint and asserted counterclaims. In the JPMC Adversary Proceeding, the Debtors have answered and asserted Counterclaims and opposed JPMC's Motion to Dismiss the Counterclaims, among other things. It simply makes no sense to move these proceedings, each concerning significant estate assets, from the Bankruptcy Court – which has been considering these and similar issues since the Debtors filed for bankruptcy almost ten months ago.

Second, delaying these proceedings threatens to delay or derail the Debtors' chapter 11 cases. Both Adversary Proceedings concern significant estate assets critical to the Debtors chapter 11 process. The recent amendments to the Bankruptcy Code impose a hard deadline of March 10, 2010 on the Debtors' exclusivity period to file a chapter 11 plan.³² If the Debtors are paid their Deposits, they will be well-positioned to file and confirm a plan in advance of their exclusivity deadline. Without their Deposits, however, the Debtors will not be able to construct the plan most beneficial to their creditors. Given that in 2008, the median time from filing to the commencement of trial for civil cases commenced in the District Court for the District of

³² See 11 U.S.C. § 1121(d) (imposing 18-month deadline on extensions of debtor's exclusivity period).

Columbia was greater than three years,³³ withdrawal and transfer of these proceedings would likely extend their resolution beyond the Debtors' maximum exclusivity period, threatening the Debtors' control over their chapter 11 cases.

C. It Will be More Efficient for the Bankruptcy Court to Resolve the Adversary Proceedings

In support of its Motion, JPMC ignores the abovementioned facts and instead focuses on the potential factual similarities between the Adversary Proceedings and the DC Action, from which it concludes that withdrawal of the reference and transfer would be more efficient and economical. (Motion at 35-6). As a threshold matter, as discussed above, JPMC has already (unsuccessfully) sought transfer of the Adversary Proceedings from the Bankruptcy Court and its attempt to relitigate the issue is improper. As the Third Circuit recently stated, preclusion rules advance "the systemic interest that courts and litigants have in ensuring that the identical parties receive only 'one bite at the apple' on a given issue." *See Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 254 (3d Cir. 2006), cert. denied, 127 S. Ct. 1878 (2007).

Even assuming, *arguendo*, that JPMC could conceivably have the Adversary Proceedings transferred and that the facts and issues in the two actions overlap, any incidental efficiency achieved by withdrawal of the reference and transfer to Washington D.C. is more than outweighed by the significant efficiencies that can be achieved by maintaining these core proceedings in the Bankruptcy Court – where they have been briefed, where the Judge is intimately familiar with the procedural and factual history, where the Bankruptcy Court is better equipped to decide core bankruptcy issues (which the Adversary Proceedings are comprised of), and where they can be expeditiously dealt with to the benefit of the Debtors' estates. *See, e.g., In*

³³ *See* 2008 Federal Court Management Statistics, U.S. District Court – Judicial Caseload Profile (<http://www.uscourts.gov/cgi-bin/cmsd2008.pl>).

re Enron Corp., 295 B.R. 21, 26 (S.D.N.Y. 2003) (finding it inefficient to withdraw core proceedings from Bankruptcy Court given Bankruptcy Court's involvement in chapter 11 proceedings for months, its familiarity with procedural history and facts surrounding the debtors' collapse, and its experience adjudicating core proceedings concerning fraudulent transfer and avoidance).

In addition to being misguided, JPMC's reliance upon "efficiency" is also insufficient to support withdrawal of the reference. *See, e.g., In re Westmoreland Coal Co.*, 221 B.R. at 515 (holding that the fostering efficiency does not, by itself, constitute "cause" for permissive withdrawal of reference); *see also Matter of Delaware & Hudson Ry. Co.*, 122 B.R. 887, 896-97 (D. Del. 1991) (concluding that "defendants' judicial economy arguments are insufficient to rebut the *DeLorean* presumption (*i.e.*, Congress intended to have bankruptcy proceedings adjudicated in bankruptcy court unless rebutted by a contravening policy) since judicial economy could be achieved in either forum").³⁴

Finally, as described *supra*, JPMC's motion is untimely and demonstrates forum shopping. Therefore, *all five Pruitt* factors and the core nature of these proceedings unequivocally weigh against granting permissive withdrawal of the reference.

³⁴ Furthermore, the efficiencies that JPMC claims could be gained by withdrawal of the reference, transfer, and consolidation are hypothetical and may never be borne out. For instance, the FDIC has moved to dismiss all of the claims in the DC Action other than those for which the Debtors filed proofs of claim, including the Debtors' claim for avoidance of capital contributions, and, to the extent it is successful, there would be absolutely no efficiencies achieved by transferring the action – only inefficiencies and delay. Moreover, the Bankruptcy Court, upon transfer, would still have to ultimately allow or disallow and administer JPMC's more than 40 proofs of claim that it willingly filed. Finally, there is no risk that JPMC will be subject to inconsistent judgments, because as the Bankruptcy Court recognized, JPMC is not a party to the DC Action in which the Debtors assert claims only against the FDIC. *See Tr. 6/24/09 at 94-95* ("The two actions are not between the same parties dealing with the same claims. The action in the D.C. Court is between the debtor and the FDIC, and involves claims the debtor has against the FDIC, which it could not bring here, because they must be brought in the D.C. Court. The actions here involve claims against JPMC, which is not an institution in receivership.")

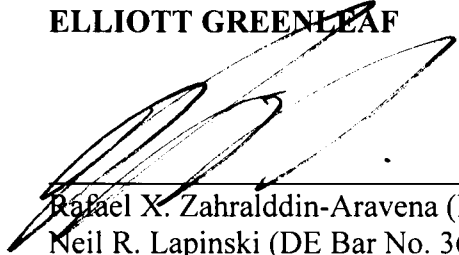
CONCLUSION

For the reasons discussed, Debtors respectfully request that the Court deny JPMC's

Motion.

Dated: July 8, 2009
Wilmington, Delaware

ELLIOTT GREENLEAF



Rafael X. Zahralddin-Aravena (DE Bar No. 4166)

Neil R. Lapinski (DE Bar No. 3645)

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-and-

QUINN EMANUEL URQUHART

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Michael B. Carlinsky

Susheel Kirpalani

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New York, New York 10010

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*Special Litigation and Conflicts Co-Counsel to Washington
Mutual, Inc. and WMI Investment Corp*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	X	
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	Chapter 11
Debtors.	:	Case No. 08-12229 (MFW)
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Plaintiff,	:	Adversary No. 09-50551 (MFW)
v.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
Defendants and Counterclaimants,	:	
and	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Additional Defendant for Interpleader claim.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	X	
Plaintiffs,	:	Adversary No. 09-50934 (MFW)
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Defendant.	:	
	X	

**APPENDIX TO DEBTORS' OPPOSITION TO
THE MOTION OF JPMORGAN CHASE BANK, N.A.
FOR WITHDRAWAL OF THE REFERENCE OF THE
ADVERSARY PROCEEDINGS PURSUANT TO 28 U.S.C. § 157(d)**

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395).

ELLIOTT GREENLEAF
Rafael X. Zahralddin-Aravena (DE Bar No. 4166)
Neil R. Lapinski (DE Bar No. 3645)
Shelley A. Kinsella (DE Bar No. 4023)
1105 North Market Street, Suite 1700
Wilmington, Delaware 19801
Telephone: (302) 384-9400
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July 8, 2009

*Special Litigation and Conflicts Co-Counsel to Washington
Mutual, Inc. and WMI Investment Corp.*

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United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the Debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

2. Basis for Claim: See Attachment A.
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

Amount entitled to priority: \$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

04 Anchor (non-complaint)
WMI original



081222909033000000000276

ATTACHMENT A

Anchor Savings Bank

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

On or about January 13, 1995, Anchor Savings Bank, F.A. ("Anchor Savings"), a predecessor of WMB, filed a so-called "Winstar" or "goodwill" claim in the U.S. Court of Federal Claims.¹ The case is now on appeal before the U.S. Federal Circuit Court of Appeals.

On January 14, 1995, Anchor Savings merged into and was operated as part of The Dime Savings Bank of New York, FSB ("Dime Savings"). On January 7, 2002, Dime Savings merged into Washington Mutual Bank, F.A., which subsequently changed its name to become WMB.

The action is essentially a breach of contract action arising out of an agreement executed in December 1988 between Anchor Savings and certain agencies of the United States government, pursuant to which Anchor Savings acquired the assets and liabilities of four failing financial institutions. Anchor Savings agreed to acquire the failing federally insured savings institutions based on certain contractual promises made by the government. More specifically, the government agreed to forbear, for a period of years, from taking enforcement action against Anchor Savings on the grounds that the amount of capital it maintained was not sufficient, so long as the capital maintained by Anchor Savings was sufficient after it treated certain assets and liabilities in a manner agreed upon by the parties.

In an opinion issued March 24, 2008, and corrected on July 16, 2008, the Court of Federal Claims held for Anchor Savings and awarded \$356,454,910.91 in damages. 81 Fed. Cl. 1, 3 (2008); see Amended Judgment, dated July 17, 2008.

¹ The case was captioned *Anchor Savings Bank, FSB v. United States*, No. 95-39C (Fed. Cl.).

JPMCB, as the transferee of WMB's assets pursuant to the P&A Agreement (and WMB as successor-in-interest to Anchor Savings), is entitled to the full amount of the damages award. This Proof of Claim is submitted with respect to any secured or unsecured claims of JPMCB against the Debtor in the event JPMCB is determined not to have acquired full right, title and interest in the full amount of the Anchor Savings damages award, \$356,454,910.91, and/or any other amount awarded in connection with the pending appeal.

The following documents are submitted in support of these claims:

- Exhibit A. Complaint in *Anchor Savings Bank, FSB v. United States*, No. 95-39.
- Exhibit B. *Anchor Savings Bank, FSB v. United States*, 81 Fed. Cl. 1 (2008).
- Exhibit C. Judgment, dated July 17, 2008.
- Exhibit D. FDIC Historical Records.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in

some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

05 American (non-complaint)
WMI original

Your Claim Is Scheduled as Follows:

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



ATTACHMENT A

American Savings Bank

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

On or about December 28, 1992, predecessors of WMI and WMB filed a so-called "Winstar" or "goodwill" claim in the United States Court of Federal Claims.¹ The case is still pending.

This action is essentially a breach of contract action arising out of an agreement executed in December 1988 between some or all of the named plaintiffs and certain agencies of the United States government, pursuant to which the plaintiffs acquired the assets and liabilities of American Savings and Loan of Stockton, California ("Old American"). The plaintiffs agreed to acquire Old American, a failed federally insured savings institution, and to invest capital into a newly created, ongoing institution—American Savings Bank, F.A. ("American Savings")—based on certain contractual promises made by the government. More specifically, in order to provide assistance to the investors funding the acquisition, the government agreed to forbear, for a period of years, from taking enforcement action against the new institution on the grounds that the amount of capital it maintained was not sufficient, so long as the capital maintained by American Savings was sufficient after it treated certain assets and liabilities in a manner agreed upon by the parties. Plaintiffs allege that the government breached these forbearance agreements and caused significant damages to American Savings. (First Amended Compl. ¶¶ 2-5.)

In July 1996 (several years after the litigation commenced), WMI entered into a merger agreement with plaintiff Keystone Holdings Partners, L.P. ("KH Partners"), pursuant to which WMI acquired all of the plaintiffs other than KH Partners. (Merger Agreement dated July

¹ The First Amended Complaint is captioned *American Savings Bank, F.A., Keystone Holdings, Inc., Keystone Holdings Partners, L.P., N.A. Capital Holdings, Inc., New American Capital, Inc. and New American Holdings Inc. v. United States*, No. 92-872C (Fed. Cl.) and was filed on March 20, 1998.

21, 2006.) KH Partners survived as a separate, unaffiliated entity. Subsequently, WMB acquired plaintiffs American Savings Bank, F.A., New American Capital, Inc., and N.A. Capital Holdings, Inc. (See Declaration of Susan R. Taylor.) Two of the named plaintiffs (Keystone Holdings, Inc. and New American Holdings, Inc.) were ultimately merged into WMI.

Although KH Partners remains a separate entity, it disclaimed any entitlement to damages awarded in this litigation. (See Merger Agreement section 2.3(g).) Accordingly, until the date of the P&A Agreement, WMB and WMI were the sole successors-in-interest to the named plaintiffs who had a stake in the outcome of this litigation.

The forbearance agreements at issue in this litigation consist of a so-called “Note Forbearance” and a “Warrant Forbearance.”

The Note Forbearance. In connection with the plaintiffs’ acquisition of Old American, Old American was divided into two thrifts – an operating thrift (plaintiff American Savings) and a liquidating thrift (or a “bad bank” called New West Federal Savings & Loan Association (“New West”). After assets were divided between these two new banks, New West had a surplus of assets over liabilities of approximately \$8 billion, and American Savings was left with an \$8 billion surplus of liabilities over assets. To balance the books of the two banks, New West issued an \$8 billion dollar note to New American. See *American Savings Bank, F.A. v. United States*, 62 Fed. Cl. 6, 9-10 (2004). In order to provide assistance to the investors who acquired Old American, the Federal Savings and Loan Insurance Corporation (“FSLIC”) guaranteed the note. Furthermore, the FSLIC provided plaintiffs a “Note Forbearance.” Pursuant to this forbearance, American Savings was allowed to record the Note Forbearance as regulatory capital in an amount equal to the amount of capital required to support the \$8 billion note that it recorded as an asset. Specifically, the Note Forbearance accounted for \$240 million in regulatory capital, or 3% of \$8 billion. *Id.* at 10-11.

The Warrant Forbearance. As part of the transaction, the FSLIC received warrants for the potential purchase of stock in American Savings’ holding company. *Id.* This agreement effectively gave FSLIC a 30% ownership interest in American Savings. In order to provide further assistance to the investors who acquired Old American, the FSLIC agreed that the value of the warrants issued to the FSLIC could be included as regulatory capital, pursuant to which the FSLIC issued a “Warrant Forbearance.” *Id.* at 10.

On August 9, 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act (“FIRREA”). As a result of this legislation, American Savings could no longer rely on either the Note Forbearance or the Warrant Forbearance when calculating its required amount of regulatory capital, and thus, it had to increase its regulatory capital from other sources. *Id.* at 11.

On August 31, 2004, the Court of Federal Claims found that the plaintiffs in this matter are entitled to damages resulting from the government’s breach of the Note Forbearance and Warrant Forbearance. 62 Fed. Cl. 6 (2004). On December 18, 2006, the Court fixed damages resulting from breach of the Note Forbearance at \$55,028,000 (the “Note Award”). 74 Fed. Cl. 756 (2006). On March 6, 2008, the Federal Circuit Court of Appeals affirmed that

award, and remanded the case to the trial court for consideration of damages from the breach of the Warrant Forbearance. 519 F.3d 1316 (Fed. Cir. 2008).

On September 10, 2008, the Court of Federal Claims entered a partial final judgment with respect to the Note Award, in effect ordering the government to pay the award of Note Forbearance damages immediately, before the Court completed proceedings on the Warrant Forbearance damages remanded by the Federal Circuit. 83 Fed. Cl. 555 (2008). The Court has not made any determinations as to which particular plaintiffs are entitled to this award.

JPMCB, as the transferee of WMB's assets pursuant to the P&A (and WMB as successor-in-interest to American Savings), is entitled to the full amount of the Note Award. American Savings was the party that incurred the damages giving rise to the award. The effect of the government's breach of the Note Forbearance was to cause American Savings to post \$240 million as regulatory capital to replace the Note Forbearance. The capital posted consisted of inventory capital held by American Savings that would otherwise have been available to apply to other requirements. The damages were thus suffered by American Savings. See Brief for Plaintiffs-Appellees American Savings Bank, F.A., *et al.* (July 20, 2007) at 13, 16, 56-67 (describing the fact that American Savings was required to dedicate or divert \$240 million of its own capital). To the extent WMI receives any portion of the Note Award, JPMCB has a contingent claim against WMI for such amount.

To date the courts have determined partial liability and damages against the government for breach of the Note Forbearance. A trial to determine the amount of remaining damages for breach of the Warrant Forbearance is scheduled to commence before the Court of Federal Claims beginning on or about April 7, 2009. As with the damages incurred due to the breach of the Note Forbearance, plaintiff American Savings suffered damages due to the breach of the Warrant Forbearance. More specifically, the plaintiffs "intend to present a claim for \$106.835 million of net costs [that] Plaintiffs incurred in using their own inventory capital to serve the purposes the promised \$167 million of warrant capital would have fulfilled but for the [government's] breach." (Kent A. Yalowitz letter to John J. Todor, dated Oct. 17, 2008 at 1 ("Yalowitz Letter").) Once again, the inventory capital at issue was held by American Savings, and thus, it should recover any damages awarded for having to use its other capital. Similarly, the plaintiffs assert a claim to lost-profit damages of \$83.318 million. (Yalowitz Letter at 2). The lost profits at issue were profits lost by American Savings. *Id.* ("The lost-profits computations incorporate American Savings' actual historical leverage, financial performance, and dividends.") This Proof of Claim is submitted with respect to any secured or unsecured claims of JPMCB against the Debtor in the event JPMCB is determined not to have acquired full right, title and interest in the full amount of amounts paid by the government in respect of any final American Savings damages award.

The following documents are submitted in support of this claim:

- Exhibit A. First Amended Complaint, filed March 20, 1998.
- Exhibit B. Declaration of Susan R. Taylor, dated December 23, 2008.

- Exhibit C. Brief for Plaintiffs-Appellees American Savings Bank, F.A. et al., dated July 20, 2007.
- Exhibit D. Damages Letter, dated October 17, 2008, from Arnold & Porter LLP (signed by Kent A Yalowitz) to U.S. Department of Justice (John J. Tudor).
- Exhibit E. Agreement for Merger, dated July 21, 1996, among WMI and Keystone Holdings Partners, L.P., Keystone Holdings, Inc., New American Holdings, Inc., New American Capital, Inc., N.A. Capital Holdings, Inc., and American Savings Bank, F.A.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmaturred or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED

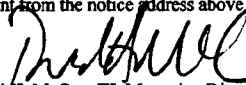
MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Intellectual Property

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the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Schedule A hereto lists the domain names (the "Domain Names") registered in the name of WMI that were, or may have been, utilized extensively, if not exclusively, in the banking operations of WMB. Schedule B hereto lists the patents (the "Patents") registered with the United States Patent and Trademark Office (the "USPTO") in the name of WMI that were utilized extensively, if not exclusively, in the banking operations of WMB. Exhibit A lists the trademarks registered with the USPTO or state authorities in the name of WMI or one or more subsidiaries. Exhibit B lists the trademarks (together with the trademarks listed on Exhibit A, the "Trademarks," and together with the Domain Names and Patents, the "IP Property") registered with foreign authorities in the name of WMI or one or more subsidiaries. The Trademarks were utilized extensively, if not exclusively, in the banking operations of WMB.

While the IP Property is in many cases registered in the name of WMI or in the name of another non-bank subsidiary, and the ownership and rights thereto have been claimed by WMI or one or more of its non-bank subsidiaries despite the fact that such registered ownership may constitute bare legal property owned, used and in certain cases funded by WMB. JPMCB files this proof of claim in respect of its understanding or belief that some or all of the IP Property, including IP Property known or unknown, listed on the Schedules or Exhibits supporting this proof of claim or otherwise, are assets of WMB at the time JPMCB acquired WMB's assets from the Receiver.

JPMCB's understanding or belief is based on one or more of the following factors, which have been identified using such information as is currently available to JPMCB in each case: (i) payments to the registrar or the USPTO or other similar authority of the IP Property were routinely made by WMB and charged to what appear to be WMB general ledger, not WMI or any general ledger of WMI, (ii) the goodwill associated with the IP Property being reflected in the official books and records of WMB as assets of WMB, (iii) payments in

connection to the IP Property having been recorded in WMB's profit and loss statement, and (iv) the full value of intangible assets, which includes, among other things, the IP Property, as reported on WMI's Quarterly Report on Form 10-Q for the quarter ended June 30, 2008 filed with the Securities and Exchange Commission, matching substantially to the full value of WMB's intangible assets as listed on WMB's Thrift Financial Report for the quarter ended June 30, 2008 filed with the Office of Thrift Supervision.

JPMCB believes the IP Property was paid for by WMB and the IP Property constitutes assets belonging to JPMCB as transferee of WMB's assets. In regard to ownership of the Domain Names, JPMCB believes some of the Domain Names may not have been used extensively by WMB, in such case JPMCB submits this proof of claim to the fullest extent such Domain Names are due to WMB as assets assigned by the Receiver to JPMCB. However, if JPMCB is not adjudged to have all right, title and interest to the IP Property, or for any reason WMI asserts more than bare legal title to the IP Property, JPMCB has filed this proof of claim against the Debtor for the value of the IP Property, which is currently unknown and any other damages it may suffer from the loss or impairment of the IP Property including any right to reimbursement, contribution, indemnity or in respect of constructive trust or any unjust enrichment relating thereto.

The following supporting documents are submitted as support of this claim:

- Exhibit A. Trademarks registered with the USPTO or state authorities in the name of WMI or one or more subsidiaries.
- Exhibit B. Trademarks registered with foreign authorities in the name of WMI or one or more subsidiaries.
- Exhibit C. Excerpt from WMI's Form 10-Q for the period ended June 30, 2008.
- Exhibit D. Excerpt from WMB's Thrift Financial Report for the period ended June 30, 2008.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to

JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below, however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

03 Deposit Accounts (non-complaint)

WMI original



0812229093300000000277

ATTACHMENT A

Intercompany Deposit Accounts

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

On the Petition Date, WMI claimed a total purported deposit liability of approximately \$4,358,492,498 (the "Intercompany Amounts") identified on the books of the Affiliated Banks and associated with twenty-nine different account numbers in the name of WMI or one of its non-bank subsidiaries (the "Accounts"). According to WMI, the Intercompany Amounts represented deposits maintained by WMI and its non-banking subsidiaries at the Affiliated Banks, all as non-interest bearing demand deposit accounts. With the exception of signature cards for several of the smaller Accounts, JPMC has not located and believes there do not exist pre-petition any deposit account agreements, signature cards or any other documentation for the Accounts as deposit accounts.

On or about October 15, 2008, JPMCB and the Debtors entered into a stipulation with respect to the Accounts (the "Account Stipulation") that was filed with the Bankruptcy Court for approval. The Account Stipulation was ultimately withdrawn following objections filed by certain creditors of the Receivership and the FDIC and was never entered by the Bankruptcy Court. Pursuant to the Account Stipulation, and before it was withdrawn, JPMCB and the Debtors executed customary deposit account agreements regarding the Accounts on or about October 21, 2008 that provided, among other things, customary rights of setoff, recoupment and banker's liens to secure JPMCB's rights to recover claims JPMCB may have against the Debtors or their subsidiaries and affiliates from the funds in the Accounts. After the execution of the customary account agreement documents, JPMCB acceded to a request of the Debtors and the Official Committee of Unsecured Creditors (the "Committee") to agree to the accrual of interest on the Intercompany Amounts as a sign of good faith in the event that it were ultimately determined that any of the Intercompany Amounts were in fact deposit accounts, without prejudice to its rights. Similarly, JPMCB agreed to release \$292 million of the Intercompany Amounts attributable to the Accounts of the non-debtor subsidiaries of WMI, without prejudice to its rights.

JPMCB agreed to those requests from the Debtors in good faith and on the understanding that the parties were working diligently to resolve open questions and issues with respect to the Intercompany Amounts. It did so in reliance on the Debtors' execution of account documentation for the Accounts that protected the interests of JPMCB, and on the understanding that the Debtors would respect those rights. However, on or about December 19, 2008, after obtaining from JPMCB the benefit of these concessions, the Debtors advised JPMCB that the execution of those deposit account agreements, was only in anticipation of the proposed Account Stipulation and, since that stipulation had never been approved, the execution and delivery of the agreements was in error, unauthorized and considered by the Debtors to be null, void and without legal effect. While JPMCB does not dispute that the Account Stipulation was never ordered, to the extent that such documentation is not effective, it should be ineffective for all parties and for all purposes, including the effectiveness of any post-petition book entries reflecting any portion of the Intercompany Amounts or Accounts as deposit liabilities and the release of any funds to the Debtors or their non-Debtor affiliates.

Deposit Liabilities

JPMCB still has not discovered any pre-petition deposit account agreements, signature cards or other customary documentation for the Accounts as deposit accounts except for the few accounts described above, but to the extent the Intercompany Amounts in the Accounts assumed by JPMCB under the P&A are in fact deposit liabilities, WMI and its subsidiaries are expressly or otherwise bound by the standard terms and conditions for deposits at the Affiliated Bank. These Accounts were established by WMI or one of its non-bank subsidiaries at the Affiliated Banks pursuant to WMI's Internal Corporate Demand Deposit Account Establishment and Usage Policy (the "On-Us Policy"). According to that policy, WMB had the right to use the Intercompany Amounts for, among other things, processing and clearing transactions between WMB and WMI or their respective subsidiaries, customers, vendors, or investors, again raising the question of whether the Intercompany Amounts represented a continuing deposit liability or should be characterized as a capital contribution, a liquidity reserve or other form of intercompany advance to the Affiliated Banks.

WMI and the Affiliated Banks maintained a detailed, forty-page policy, named the Master Business Account Disclosures and Regulations (the "MBA Policy"), that operated as a contract setting forth the terms and conditions governing all deposit accounts established at the Affiliated Banks. The MBA Policy contained, among other things, a self-executing clause that made the terms of the policy binding upon all depositors, even those who did not expressly give permission, through consent implied by the opening and continued use of the deposit account. The MBA Policy and its terms and conditions apply to and govern any accounts that are in fact deposit accounts at the Affiliated Banks, including the Accounts to the extent any are deposit accounts. The MBA Policy expressly grants the Affiliated Banks a right to offset any and all claims against all deposit account liabilities. Specifically, the MBA Policy provides, "you agree we have the right to offset any account or asset of yours then held by us, by our sister bank, or any subsidiary of ours or our sister bank." Said differently, to the extent the Accounts and the Intercompany Amounts contained therein are deposit liabilities of the Affiliated Banks, the MBA Policy created a broad contractual right of setoff against the Accounts and the Intercompany Amounts for the benefit of the Affiliated Banks and their subsidiaries. Whether pursuant to the

MBA Policy or otherwise, under applicable law, JPMCB has a security interest in, lien rights against and rights of set off and recoupment against the Intercompany Amounts.

JPMCB's Express Security Interest

WMI entered into at least two security agreements with WMB, copies of which are attached hereto (the "Security Agreements"). Pursuant to the Security Agreements, WMI granted a security interest in and lien upon at least two accounts to WMB—Account No. 177-8911206 and Account No. 314-197966-3.

JPMCB believes that its secured claims against Account No. 177-8911206 exceed the balance therein. With respect to Account No. 314-197966-3, JPMCB is entitled to recover any amounts WMI may owe under that certain Indemnification and Collateral Account Pledge and Security Agreement, dated March 1, 2006 (the "Indemnification Agreement"), between WMI and WMB, pursuant to which WMI agreed to indemnify WMB and its subsidiaries for certain liabilities of Long Beach Mortgage Company, a Delaware corporation ("Long Beach"). At the time the parties entered into the Indemnification Agreement, Long Beach became a wholly owned subsidiary of WMB in a series of reorganization transactions. As a condition to its receipt of regulatory approval of the reorganization transactions, WMI indemnified WMB for certain future Long Beach liabilities and secured its indemnification obligations by establishing a blocked deposit account (the "Pledged Account") with WMB. WMI granted WMB a security interest in the Pledged Account and all deposits credited thereto, which JPMCB believes do not exceed \$750,000.

The September \$3.67 Billion Book Entry Transfer for Account No. 44100000064234

WMI has asserted that JPMCB is liable for a WMI deposit account allegedly maintained at WMB as of the Petition Date and identified as Account No. 44100000064234. It appears that neither WMBfsb nor JPMCB ever received cash or other funds at any time from or after the establishment of that account. Accordingly, even if that account were a deposit account, JPMCB is not liable therefor and is entitled to recover and recoup the full balance claimed for WMI's failure to deposit funds.

The Debtor has been receiving monthly statements reflecting the account due to its agreement to the terms of the Account Stipulation and the deposit agreements that provide JPMCB on behalf of itself and its affiliates and subsidiaries with broad post-petition lien rights and rights of set off and recoupment resulted in the entry of the \$3.67 Billion Book Entry Transfer as a deposit liability on the books and records of JPMCB. Having executed the standard deposit agreements with JPMCB necessary to have this account reflected as a deposit at JPMCB, WMI should be estopped from taking the position that these account agreements were a mistake and not binding on it or from enjoying the benefit of having the Accounts reflected as deposit liabilities free of the lien and setoff rights created by those very same agreements. To the extent that any post-petition book entry is considered as relevant to the status of the purported deposit, any such resulting deposit should similarly be considered subject to the depository institution's rights, including post-petition contractual and statutory rights of setoff, that accompany the post-petition deposit.

The Tax Refunds in the Accounts

A substantial portion of the Intercompany Amounts were, at the time of the Receivership and the Petition Date, in fact the property of the Affiliated Banks, representing tax payments made by the Affiliated Banks either as (i) accelerated payments of amounts previously claimed by WMI against the Affiliated Banks purportedly for taxes paid in prior years by WMI on behalf of the Affiliated Banks; or (ii) amounts transferred to WMI in payment of estimated or actual 2008 taxes. JPMCB believes those payments totaled at least \$922 million between August 19 and September 19, 2008.

In addition, after the Petition Date, an amount equal to at least \$248 million of tax refunds due to WMB—the rights to which were purchased by JPMCB as assets of WMB (the “Tax Refunds Received”)—were paid to WMI. An amount equal to at least approximately \$234 million of the Tax Refunds Received are included in the balance of the Intercompany Amounts and the Accounts and should be paid over to JPMCB as the lawful owner of those funds.

The Tax Refunds Received should not have been, and at various times were not in fact, recorded in any way as a deposit liability. The Tax Refunds Received were and are property of JPMCB purchased under the P&A Agreement.

The following documents, all of which are attached to the Declaratory Relief Complaint are submitted in support of this claim:

- Exhibit A: List of the Accounts provided to JPMCB by WMI shortly after the Petition Date.
- Exhibit B: Account Stipulation, dated October 15, 2008, by and between JPMCB and the Debtors.
- Exhibit C: Deposit Account Agreements, dated on or about October 21, 2008, executed by Debtors for the Accounts.
- Exhibit D: WMI’s Internal Corporate Demand Deposit Account Establishment and Usage Policy (the “On-Us Policy”).
- Exhibit E: WaMu’s Master Business Account Disclosures and Regulations (the “MBA Policy”).
- Exhibit F: Security Agreement for Account No. 177-8911206.
- Exhibit G: General Ledger Journal Entry for \$3.67 Billion Book Entry Transfer.
- Exhibit H: On-Us Elevation Reports for August, September and October of 2008.
- Exhibit I: Tax related support.

- Exhibit J: Form of Indemnification and Collateral Account Pledge and Security Agreement, dated March 1, 2006.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Your Claim Is Scheduled as Follows:

37 Intercompany Receivables / Loans - WMI
WMI original

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

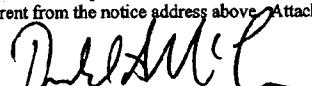
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



ATTACHMENT A

Intercompany Receivables (WMB)

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

In the normal course of operations of WMB and the Debtors, whether such operations arose from the Administrative Services Agreement or otherwise, amounts due from or payable to each party were recorded as general ledger entries. Amounts were not continuously netted, but instead were recorded in separately identified general ledger accounts as what were, in effect, accounts receivable and payable. Amounts due to or from each entity were settled on a monthly basis.

As of the Petition Date, general ledger accounts between WMB and the Debtors recorded amounts due to WMB from the Debtors in the aggregate of \$36,908,696.58. This proof of claim is submitted in respect to any intercompany receivable owing to WMB to the fullest extent such amounts are due to WMB as amounts assigned by the Receiver to JPMCB on the

general ledger of WMI (and without duplication of intercompany advances owed by the Debtor with respect to claims allowed under other proofs of claim filed in this Bankruptcy Court).

The following documents are submitted in support of this claim:

- Exhibit A. Summary of Certain Intercompany Accounts Receivables Owing from Debtors as of September 25, 2008.
- Exhibit B. Administrative Services Agreement, by and between WMB and WMI, on behalf of itself, all of its current and future subsidiaries, dated as of May 1, 2006.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMC Wind Investment LLC
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Numl 45 JPMC Wind Investment LLC
(If kno WMI original
Filed

Your Claim Is Scheduled as Follows:

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Yale C. Henderson, Managing Director
JPMorgan Capital Corporation, as Managing Member of JPMC Wind Investment LLC
10 South Dearborn, 12th Floor
Mail Suite IL1-0502
Chicago, Illinois 60603-2003; 312.732.5273

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



ATTACHMENT A

JPMC Wind Investment LLC

JPMC Wind Investment LLC (“Wind Investment”) and WMI Investment Corp. (“Debtor”) are parties to the Limited Liability Company Agreement of JPMC Wind Investment Portfolio LLC (the “Company”), dated as of April 3, 2008 (the “Company Agreement”). The Company Agreement designates Wind Investment as the Managing Member of the Company and the Debtor as the Investor Member.

The Company Agreement provides that the Debtor is to indemnify the Company and Wind Investment against certain losses, liabilities, damages and expenses as described below.

Paragraph 12(d) of the Company Agreement provides that the Debtor shall indemnify both the Company and Wind Investment against any loss, including adverse tax consequences and reasonable legal, accounting and other expenses, resulting from a transfer of the Debtor’s membership interest in the event that tax counsel for the Company has opined that such transfer would cause a termination of the Company or any Project Company (as defined in the Company Agreement) for federal income tax purposes.

Paragraph 12 (f) of the Company Agreement provides that in the event a member of the Company assigns its interest in the Company to a third party, the transferring member and its transferee shall execute an agreement which includes among its terms the obligation to indemnify the Company and its members against any liability or loss suffered on account of the transfer, including any liability or loss resulting from violation of federal or state securities laws.

Paragraph 14(b) of the Company Agreement provides that in the event that that the Debtor were to elect to continue the business of the Company upon a dissolution of the Company occurring under certain events, the Debtor shall indemnify from and against any loss, damage, liability and expense, including reasonable attorneys’ fees, which Wind Investment may incur.

Paragraph 15(b) of the Company Agreement provides that the members of the Company, including the Debtor, are required to make a Capital Contribution (as defined in the Company Agreement) in certain circumstances in the event of the liquidation of a specified Project Company (as defined in the Company Agreement).

On or about February 24, 2009, the Debtor advised Wind Investment, as Managing Member of the Company, that the Debtor intended to solicit offers from third parties to acquire the Debtor’s interest in the Company. No such transfer has been completed as of the date of this Proof of Claim.

This Proof of Claim is submitted in respect to any and all contingent, unliquidated or unmatured amounts owing to Wind Investment to the fullest extent such amounts are due to Wind Investment for liabilities or damages that arise under the Company Agreement, including but not limited to the provisions above, or applicable law with respect to any proposed transfer by the Debtor of its interest in the Company, unmet Capital Contributions or otherwise.

The following document is submitted in support of this claim:

- Exhibit A. Limited Liability Company Agreement of JPMC Wind Investment Portfolio LLC, dated as of April 3, 2008, between JPMC Wind Investment LLC and WMI Investment Corp.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of Wind Investment's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude Wind Investment from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtor for any claims of third parties that may be asserted against Wind Investment.

Wind Investment reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to Wind Investment that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person to make claims similar to or parallel with this claim.

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Nothing in this claim describing or in any way relating to property in which the Debtor now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtor has any rights in such property. This claim is submitted to assert and preserve this claim in the Debtor's pending bankruptcy case, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that Wind Investment or any other person has waived or intends to waive any rights or claims afforded it under any other agreement with persons other than the Debtor or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

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WMI Investment Corp. 08-12228 (MFW)

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JPMC Wind Investment Portfolio LLC
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6660
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

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Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

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Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority: \$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Yale C. Henderson

Yale C. Henderson, Managing Director
JPMorgan Capital Corporation, as Managing Member of JPMC Wind Investment LLC, in turn as Managing Member of JPMC Wind Investment Portfolio LLC
10 South Dearborn, 12th Floor
Mail Suite IL1-0502
Chicago, Illinois 60603-2003; 312.732.5273

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for executing fraudulent claim: Fine of up to \$50,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

46 JPMC Wind Investment Portfolio LLC
WMI original



081222809033000000000013

ATTACHMENT A

JPMC Wind Investment Portfolio LLC

JPMC Wind Investment LLC (“Wind Investment”) and WMI Investment Corp. (“Debtor”) are parties to the Limited Liability Company Agreement of JPMC Wind Investment Portfolio LLC (the “Company”), dated as of April 3, 2008 (the “Company Agreement”). The Company Agreement designates Wind Investment as the Managing Member of the Company and the Debtor as the Investor Member.

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On or about February 24, 2009, the Debtor advised Wind Investment, as Managing Member of the Company, that the Debtor intended to solicit offers from third parties to acquire the Debtor’s interest in the Company. No such transfer has been completed as of the date of this Proof of Claim.

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United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

17 Lakeview Pension Plan
WMI original

Your Claim Is Scheduled as Follows:

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

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1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

Amount entitled to priority:

\$ See Attachment A

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III
Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000298

ATTACHMENT A

Lakeview Pension

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMP") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

The Retirement Income Plan for Salaried Employees of Lakeview Savings Bank (the "Plan") is a qualified pension plan originally sponsored by The Dime Savings Bank of New York ("Dime Savings"). On January 7, 2002, Dime Savings merged into Washington Mutual Bank, F.A., which subsequently changed its name to become WMB. Dime Bancorp Inc. was the sponsor of the Lakeview plan. Dime Bancorp Inc. merged into WMI in 2002, and WMI thereby became the sponsor of the Lakeview plan. IRS Forms 5500 have consistently shown that WMI is the sponsor. A required contribution to the Plan with respect to periods prior to the Petition Date was due shortly after the Petition Date. JPMCB made a contribution of \$20,548 to the Plan on October 14, 2008 in order to avoid late payment penalties that would otherwise have been assessed to WMI. JPMCB has a claim against WMI's estate for the reimbursement, indemnification and/or contribution of such payment.

The following documents are submitted in support of these claims:

- Exhibit A. Retirement Income Plan for Salaried Employees of Lakeview Savings Bank.
- Exhibit B. JPMCB's Accounting Statement for October 2008.
- Exhibit C. 2007 Fiscal Year IRS Form 5500.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as a priority claim to the extent allowable and entitled to priority under section 507(a)(5) of the Bankruptcy Code for the amounts due to any employee benefit plan from the Debtors and assigned to JPMCB upon contributions made thereto by JPMCB.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED


MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

42 Letters of Credit
WMI original

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



ATTACHMENT A

Letters of Credit

Zurich American Insurance Company

Bank One, N.A. (predecessor by merger to JPMorgan Chase Bank, N.A. ("JPMCB")) ("Issuing Bank") issued an Irrevocable Standby Letter of Credit for the account of Washington Mutual, Inc. ("WMI") to Zurich American Insurance Company ("Zurich"), as beneficiary, on June 4, 2003 in the original face amount of \$9,527,000, under Bank One Letter of Credit No.331744 and JPMC Reference No. CPCS-629181 ("SBLC No.1"). The Letter of Credit was to support WMI's obligations to the insurer in respect of workers compensation policy deductibles. SBLC No.1 was amended on April 16, 2004, April 8, 2005, May 22, 2007, May 23, 2007 and May 12, 2008. As amended, SBLC No.1 is in the current outstanding amount of \$18,000,000 and expires on June 4, 2009.

In connection with issuance of SBLC No.1, WMI, as Applicant, entered into an Application and Agreement for Irrevocable Standby Letter of Credit dated May 21, 2003 and Agreement for Irrevocable Standby Letter of Credit in favor of Issuing Bank (the "SBLC No.1 Reimbursement Agreement"). Pursuant to the SBLC No.1 Reimbursement Agreement, WMI agreed to reimburse Issuing Bank the amount of each draft drawn under each letter of credit issued at its request. In addition, WMI agreed to pay the Issuing Bank's customary letter of credit commissions and fees in effect from time to time.

In the event of a drawing by the beneficiary that conforms to the requirements of SBLC No.1, JPMCB would have an irrevocable obligation to pay the amount of such drawing. In such event WMI would thereafter have an immediate obligation to reimburse Issuing Bank the amount of such drawing. The maximum amount available to be drawn by the beneficiary on or before the expiry date is \$18,000,000.

WMI owes overdue letter of credit fees to JPMCB in respect of SBLC No.1 at the rate of 0.6% per annum, payable quarterly in advance. JPMCB invoiced WMI under Bill number CPCS629181315483 dated March 2, 2009 for fees payable by WMI to JPMCB for the period from March 2, 2009 to June 1, 2009 (92 days) in the amount of \$27,600.00. This invoice has not been paid.

JPMCB asserts a contingent reimbursement claim against WMI's bankruptcy estate in the maximum remaining available amount of SBLC No.1 (\$18,000,000). JPMCB also asserts a claim against WMI's bankruptcy estate in the amount of unpaid letter of credit fees payable in respect of SBLC No. 1 in the amount of \$27,600.00.

Baltimore County, Maryland

Bank One, N.A. (predecessor by merger to JPMCB) ("Issuing Bank") issued an Irrevocable Standby Letter of Credit for the account of Washington Mutual, Inc. ("WMI") on behalf of Ahmanson Residential Development on March 18, 2003 in the original face amount of \$5,000,000, under Bank One Letter of Credit No.331744 and JPMC Reference No. CPCS-628237 ("SBLC No.2") to Baltimore County, Maryland ("Baltimore"), as beneficiary, to cover

the estimated cost for construction improvements under various agreements and permits. SBLC No.2 was amended on June 25, 2003, November 7, 2003, October 28, 2004, May 4, 2005, July 11, 2005, December 2, 2005, December 12, 2005, April 24, 2006, February 5, 2007, December 10, 2007, September 18, 2008 and March 23, 2009. As amended, SBLC No.2 is in the current outstanding amount of \$5,500 and expires on March 16, 2010.

In connection with issuance of SBLC No.2, WMI, as Applicant, entered into an Application and Agreement for Irrevocable Standby Letter of Credit dated February 27, 2003 and Agreement for Irrevocable Standby Letter of Credit in favor of Issuing Bank (the "SBLC No.2 Reimbursement Agreement"). Pursuant to the SBLC No.2 Reimbursement Agreement, WMI agreed to reimburse Issuing Bank the amount of each draft drawn under each letter of credit issued at its request. In addition, WMI agreed to pay the Issuing Bank's customary letter of credit commissions and fees in effect from time to time.

In the event of a drawing by the beneficiary that conforms to the requirements of SBLC No.2, JPMCB would have an irrevocable obligation to pay the amount of such drawing. In such event WMI would thereafter have an immediate obligation to reimburse Issuing Bank the amount of such drawing. The maximum amount available to be drawn by the beneficiary on or before the expiry date is \$5,500.

WMI owes letter of credit fees to JPMCB in respect of SBLC No. 2 in the amount of \$250.00. JPMCB invoiced WMI under Bill number CPCS628237334490 dated March 23, 2009 for an amendment fee payable by WMI to JPMCB in the amount of \$250.00.

JPMCB asserts a contingent reimbursement claim against WMI's bankruptcy estate in the maximum remaining available amount of SBLC No.2 in the amount of \$5,500. JPMCB also asserts a claim against WMI's bankruptcy estate in the amount of unpaid letter of credit fees payable in respect of SBLC No. 2 in the amount of \$250.00.

Lumbermens Mutual Casualty Company

Bank One, N.A. (predecessor by merger to JPMCB) ("Issuing Bank") issued an Irrevocable Standby Letter of Credit for the account of Washington Mutual, Inc. to Lumbermens Mutual Casualty Company, American Motorists Insurance Company, American Manufacturers Mutual Insurance Company and American Protection Insurance Company (collectively, "Lumbermens"), as beneficiaries, on February 23, 2004 in the original face amount of \$13,800,000, under Bank One Letter of Credit No.440005 and JPMC Reference No. CPCS-632350 ("SBLC No.3") to support WMI's obligations to the insurers in respect of workers compensation policy deductibles. SBLC No.3 was reduced by amendment to \$1,500,000 and expired undrawn on February 20, 2009.

WMI owes letter of credit fees to JPMCB in respect of SBLC No.3 at the rate of 0.5% per annum, payable quarterly in advance. JPMCB invoiced WMI under Bill number CPCS632350255464 dated January 2, 2009 for fees payable by WMI to JPMCB for the period from January 1, 2009 to February 20, 2009 (51 days) in the amount of \$1,062.50. This invoice has not been paid.

JPMCB asserts a claim against WMI's bankruptcy estate for unpaid letter of credit fees payable in respect of SBLC No.3 in the amount of \$1,062.50.

The following documents are submitted in support of these claims:

- Exhibit A. Application and Agreement for Irrevocable Standby Letter of Credit to Zurich, dated May 21, 2003; Letter of Credit issued June 4, 2003 to Zurich, as Beneficiary; Increasing Amendment No. 1, dated April 16, 2004; Increasing Amendment No. 2, dated April 8, 2005; Decreasing Amendment No. 1, dated May 22, 2007; Decreasing Amendment No. 2, dated May 23, 2007; and Decreasing Amendment No. 3, dated May 12, 2008.
- Exhibit B. Bill number CPCS629181315483 for SBLC No.1, dated March 2, 2009.
- Exhibit C. Application and Agreement for Irrevocable Letter of Credit to Baltimore, dated February 27, 2003; Letter of Credit issued March 18, 2003 to Baltimore, as Beneficiary; and Amendments dated June 25, 2003; November 7, 2003; October 28, 2004; May 4, 2005; July 11, 2005; December 2, 2005; December 12, 2005; April 24, 2006; April 24, 2006; February 5, 2007; December 10, 2007 September 18, 2008 and March 23, 2009.
- Exhibit D. Bill number CPCS628237334490 for SBLC No. 2, dated March 23, 2009.
- Exhibit E. Application and Agreement for Irrevocable Standby Letter of Credit to Lumbermens, dated February 10, 2004; Letter of Credit issued February 23, 2004 to Lumbermens, as Beneficiary; Amendment No. 1, dated December 14, 2004; Amendment No. 2, dated October 21, 2005.
- Exhibit F. Bill number CPCS632350255464 for SBLC No.3, dated January 2, 2009.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtor for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to

JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtor's possession, or of such quantity that their submission herewith would be administratively impracticable and (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtor now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtor has any rights in such property. This claim is submitted to assert and preserve this claim in the Debtor's pending bankruptcy case, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under any other agreement with persons other than the Debtor or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Proof of Claim 22 Pre-Petition Vendor Claims
WMI Original



081222909033000000000285

ATTACHMENT A

Pre-Petition Vendor Claims

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

On the Petition Date, WMI was a party to various agreements with counterparties for the provision of goods, services, and/or licenses (collectively, the "Vendor Contracts"). Under certain of the Vendor Contracts, the counterparties thereto provided goods, services, and/or software licenses thereunder to or for the benefit of WMB (together with its subsidiaries and minority investments) in connection with its banking operations, notwithstanding the fact that WMB was not a party to such contracts (collectively, the "WMI-WMB Agreements").

In light of JPMCB's purchase of certain of the assets of WMB from the FDIC, it entered into that certain Stipulation By And Between Debtors And JPMorgan Chase Bank, N.A. Concerning Certain Vendor Contracts, dated October 16, 2008, with the Debtor (the "Vendor Stipulation"), which was approved by Order of the Bankruptcy Court, dated December 30, 2008.

The Vendor Stipulation contemplates and provides that, *inter alia*, JPMCB is authorized to receive the goods, services, and/or software provided under the WMI-WMB Agreements but is required to pay all fees and expenses for goods purchased, services provided, and/or software utilized to or by JPMCB following the Petition Date until the expiration of twenty (20) days following notice by JPMCB to WMI. Pursuant to Section 2 of the Vendor Stipulation, WMI contractually agreed that JPMCB would be subrogated with respect to pre-petition claims under the WMI-WMB Agreements paid by JPMCB: "JPMC shall be subrogated to the rights of any counterparty as to WMI for any prepetition amounts due to such counterparty and paid by JPMC. . . ."

Since the Petition Date, JPMCB has paid pre-petition amounts owing under various Vendor Contracts and WMI-WMB Agreements, including, without limitation, those agreements set forth on Schedule A hereto, to the counterparties to such agreements, and may continue to make such additional payments in the future (collectively, "JPMCB Pre-Petition Vendor Payments"). With respect to some of the JPMCB Pre-Petition Vendor Payments, JPMCB obtained (or will obtain) a contractual assignment of the counterparty's right, title, and interest to the pre-petition claim under the Vendor Contract, including the right to assert such claim in a proof of claim against WMI bankruptcy estate. Other JPMCB Pre-Petition Vendor Payments have been (or will be) made to counterparties to WMI-WMB Agreements, entitling JPMCB to subrogation to the rights of such counterparties with respect to the pre-petition claim under the terms of the Vendor Stipulation. Still other JPMCB Pre-Petition Vendor Payments have been (or will be) made to counterparties to Vendor Contracts which JPMCB sought (or will seek) to have assumed and assigned to it under Section 365 of the Bankruptcy Code. With respect to any cure payment made by JPMCB in the context of such assumption and assignment which satisfies any unpaid pre-petition claim of the counterparty to such Vendor Contract, JPMCB is entitled to assert such pre-petition claim against the Debtor's bankruptcy estate, whether by virtue of agreed assignment of such claim, subrogation, or as otherwise provided under applicable law.

JPMCB believes the Vendor Contracts paid for by WMB should be assets of JPMCB as assignee of WMB's assets. JPMCB believes that some or all of the Vendor Contracts were assets of WMB at the time JPMCB acquired WMB's assets from the Receiver because payments to the vendors under these contracts were routinely made by WMB, not WMI, out of what appear to be WMB accounts rather than any WMI accounts, and the services provided under the Vendor Contracts were utilized extensively, if not exclusively, by WMB for its banking operations prior to the Petition Date. If JPMCB is not adjudged to have all right, title and interest to such Vendor Contracts, or for any reason WMI asserts more than bare legal title to such Vendor Contracts, JPMCB has a claim against WMI's estate for all damages it may suffer from the loss of such Vendor Contracts.

Accordingly, JPMCB asserts this claim for all JPMCB Pre-Petition Vendor Payments, whether previously made or to be made in the future, including, without limitation, payments made in connection with the agreements set forth on Schedule A hereto, whether the right to assert such claims arises by way of: (i) assignment; (ii) contractual subrogation under the terms of the Vendor Stipulation; (iii) equitable, statutory, or common law principles of subrogation; and/or (iv) other applicable law. As of the date of this proof of claim, JPMCB

calculates its claim on account of JPMCB Pre-Petition Vendor Payments to be in an amount no less than \$17,168,035.36.

All of the contracts listed in Schedule A are subject to confidentiality restrictions binding on JPMCB and therefore have not been attached to this proof of claim. Please see below for instructions on how to gain access to or obtain copies of such contracts.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFV)

WMI Investment Corp. 08-12228 (MFV)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

06 Rabbi Trusts (non-complaint)
WMI original

Filed on: _____

Your Claim Is Scheduled as Follows:

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form. EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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RECEIVED


MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



ATTACHMENT A

Rabbi Trusts

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

This claim is filed in respect of JPMCB's ownership, as WMB's transferee, of the assets of seven rabbi trusts ("Legacy Rabbi Trusts") that support the benefits payable under various nonqualified deferred compensation plans initially sponsored by Great Western Financial Corporation (two trusts) ("Great Western Trusts"), Dime Bancorp, Inc. (four trusts) ("Dime Trusts") and Providian Financial Corporation (one trust) ("Providian Trust"). WMB acquired the assets of the Legacy Rabbi Trusts as the result of a series of mergers involving WMB and its former holding companies WMI and/or New American Capital Inc. ("NACI"), or asset purchases. In addition, this claim is filed in respect of JPMCB's ownership of any other rabbi trusts that were recorded as assets of WMB.

Although WMI claims no ownership of the assets of the Legacy Rabbi Trusts, and JPMCB has provided documentation with respect to the conclusion that WMB properly accounted for the assets of these trusts on its books and that WMB was the successor to the original settlor, it will not cooperate in effectuating the transfer of the assets to JPMCB. This proof of claim is filed for or to claim damages and other amounts due to JPMCB arising out of WMI's conduct in regard to these assets.

The total value of the assets in the trusts is \$416,805,201.

This Proof of Claim is submitted with respect to any resulting secured or unsecured claims of JPMCB against the Debtor in the event JPMCB is determined not to have acquired full right, title and interest in any of the disputed rabbi trust assets.

The following documents are submitted in support of these claims:

- Exhibit A: E-mails showing WMB purchase of assets of Great Western Trusts.
- Exhibit B: Account statements for Great Western assets.
- Exhibit C: Plan of Merger, dated October 23, 2007.
- Exhibit D: Assignment and Assumption Agreement, dated October 23, 2007.
- Exhibit E. Amendment to Agreement and Plan of Merger, dated September 23, 2005.
- Exhibit F. Account Statements for Dime Trust assets and related materials.
- Exhibit G. Certificate of Merger, dated January 25, 2002.
- Exhibit H. Dime Trust Assets on General Ledger balance.
- Exhibit I. Letter, dated March 24, 2005, regarding Umbrella Trust Agreement.
- Exhibit J. HSBC Account Statements.
- Exhibit K. WaMu / Dime tax related documents.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to

confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)
Filed on: _____

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

41 Potential Goodwill Litigation
WMI original

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000263

ATTACHMENT A

Potential Goodwill Litigation

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

The facts and circumstances surrounding the Debtor's American Savings Bank and Anchor Savings Bank related claims and interests have been set out in the District Court Action, the Declaratory Relief Complaint and specific proofs of claim filed by JPMCB concurrently relating to American Savings Bank and Anchor Savings Bank damages. This proof of claim is submitted in respect to any loss or damages incurred if and to the extent there is any other "Winstar" or "goodwill" claim in the U.S. Court of Federal Claims filed by WMB or one or more of its predecessors, and any damages are awarded to WMB or one or more of its predecessors but paid to WMI. JPMCB's claim against WMI in any such future event would be for an as-of-yet undetermined amount.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in

some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a) 2.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

Amount entitled to priority:

See Attachment A

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

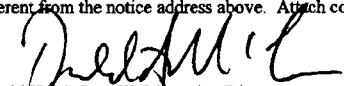
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Rent to Third Parties

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

On March 1, 1995, Del Mar Partners, a General Partnership ("Del Mar"), as landlord, and H.F. Ahmanson and Company ("Ahmanson"), as tenant, entered into a lease agreement (the "Del Mar Lease") pertaining to Suite 250 located at 915 Camino Del Mar, Del Mar, California (the "Del Mar Premises"). Since 1995, the Del Mar Lease has been amended and extended on several occasions. In 1998, Ahmanson merged with a WMI subsidiary, at which time Ahmanson became a wholly-owned subsidiary of WMI. Under the terms of the Del Mar Lease, as amended, Ahmanson had an obligation to pay Del Mar rent at a rate of \$3,500 per month. Prior to the Petition Date, WMB administered all leases to which WMI and all its subsidiaries were party. Following the Petition Date, prior to the complete separation of the businesses of WMI and WMB, JPMCB paid Del Mar rent in relation to the Del Mar Premises on three instances. WMB issued Check 292682 in the amount of \$3,500 on September 26, 2008,

Check 294704 in the amount of \$3,500 on October 26, 2008 and Check 298299 in the amount of \$3,500 on December 8, 2008. As a result, JPMCB has a claim against WMI in the amount of \$10,500 for payments owed by Ahmanson in regard to the Del Mar Premises.

On September 4, 2002, Oakland City Center LCC ("OCC"), as landlord, and Lawyers' Asset Management, Inc. ("LAMI"), as tenant, entered into a lease agreement (the "Oakland Lease") pertaining to property located at 555 Twelfth Street, Oakland, California (the "Oakland Premises"). The Oakland Lease terminates in 2012. In 2006, Commercial Capital Bancorp, Inc ("CCBI") acquired LAMI, at which point a subsidiary of CCBI, TIMCOR Exchange Corporation ("TIMCOR") became successor in interest to LAMI for the Oakland Premises. Later that same year, CCBI was acquired by WMI, at which point TIMCOR became a subsidiary of New American Capital, Inc, itself a subsidiary of WMI. As a result, TIMCOR became an indirect subsidiary of WMI. In 2007, WMI changed the name of TIMCOR to WaMu 1031 Exchange ("1031"), at which point 1031 became the Oakland Premises tenant under the Oakland Lease. Under the terms of the Oakland Lease, 1031 had an obligation to pay OCC rent at a rate of \$9552.25 per month. Prior to the Petition Date, WMB administered all leases to which WMI and all its subsidiaries were party. Following the Petition Date, prior to the complete separation of the businesses of WMI and WMB, JPMCB paid OCC rent and fees, minus certain adjustments, in relation to the Oakland Premises for the month of September 2008 in the amount of \$2,475.19. As a result, JPMCB has a claim against WMI in the amount of \$2,475.19 for payments owed by 1031 in regard to the Oakland Premises.

In total, JPMCB has a claim against WMI for \$12,975.19.

The following documents are submitted in support of these claims:

- Exhibit A. Lease Agreement, dated as of March 1, 1995, between Del Mar Partners, a General Partnership and H.F. Ahmanson and Company.
- Exhibit B. Amendment to Lease, dated as of April 11, 2008, between BMR International II. L.L.C. (as successor-in-interest through intermediate assignments to Del Mar Partners) and Washington Mutual Bank.
- Exhibit C. Lease, dated as of September 4, 2002, between Oakland City Center LLC and Lawyers' Asset Management, Inc.
- Exhibit D. Letter regarding name change of TIMCOR Exchange Corporation to WaMu 1031 Exchange, dated as of March 27, 2007.
- Exhibit E. Letter regarding merger of Commercial Capital Bancorp, Inc. with and into New American Capital, Inc., dated as of October 1, 2006.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section

503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the

claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Your Claim Is Scheduled as Follows:

08 WaMu Savings Plan / 401(k) (non-complaint)
 WMI original

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a) 2.

Amount entitled to priority:

\$ See Attachment A

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RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

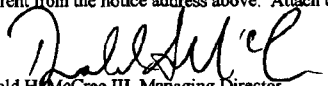
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



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ATTACHMENT A

Savings Plan / 401(k)

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

WMI is the sponsor of the WaMu Savings Plan ("Plan"), a tax qualified 401(k) plan. The Plan provides benefits to the employees and former employees of WMI and its affiliated companies, including the current and former employees of WMB.

Under the Plan, participating employees contribute a percentage of their pre-tax income to the Plan. Prior to the Petition Date, WMB would then match a portion of participants' contributions and fund that amount by making a payment to the trust associated with the Plan, which was administered by Fidelity Management Trust Company.

Since September 25, 2008, JPMCB has been seeking to assume the Plan to ensure that participants retain their benefits and interests under the Plan. In anticipation of sponsoring the Plan, JPMCB, for the benefit of former Washington Mutual employees currently employed by JPMCB, has directed employee contributions into the Plan and funded significant matching contributions.

Additionally, there was filed against WMI and other defendants a class action entitled *In re Washington Mutual, Inc. ERISA Litigation* (W.D. Wa.) (the "401(k) Class Action"), asserting, among other things, that the inclusion of WMI's common stock as an investment choice in the Plan was a breach of WMI's and others' fiduciary obligations. WMI has since been dismissed from the 401(k) Class Action. On February 18, JPMCB was named as defendant in the 401(k) Class Action even though it is not the plan sponsor or an "employer" as defined by the Plan.

This proof of claim is filed for the amounts JPMCB has contributed to the Plan on behalf of covered employees in anticipation of its becoming the sponsor of the Plan in the event that the outcome of all matters relating to disposition of the Plan and related assets that are

addressed in the District Court Action and the Adversary Proceeding cause JPMCB to elect not to become sponsor of the Plan.

In addition, this proof of claim is filed in respect of (i) any cost or loss (including but not to limited, costs and losses associated with benefits, fiduciary breaches, penalties, taxes, indemnification obligations and attorney fees) in connection with the 401(k) Class Action or any other current or future lawsuit related to the Plan that may be incurred or suffered by JPMCB resulting from pre-Petition acts of WMI and the fiduciaries appointed by WMI, and (ii) any insurance proceeds received by WMI in connection with the 401(k) Class Action or any other current or future lawsuit related to the Plan up to the full unreimbursed amount of any cost or loss (including but not limited to, costs and losses associated with benefits, fiduciary breaches, penalties, taxes, indemnification obligations and attorney fees associated with such lawsuits), incurred or suffered by JPMCB.

If JPMCB is named as an adverse party in any governmental agency proceedings relating to the Plan, including but not limited to claims for benefits, fiduciary breach, penalties, taxes and attorney fees, JPMCB will suffer pecuniary losses resulting from acts of WMI to which it makes a claim hereunder.

JPMCB also asserts a claim for unjust enrichment for the amount of JPMCB's contributions made to the Plan in the event JPMCB does not assume the Plan.

The following documents are submitted in support of these claims:

- Exhibit A. WaMu 401(k) Plan, as last amended April 19, 2007.
- Exhibit B. Consolidated Amended Complaint from *In re Washington Mutual Inc. ERISA Litigation*.

This proof of claim is submitted as a priority claim to the extent allowable and entitled to priority under section 507(a)(5) of the Bankruptcy Code for the amounts due to any employee benefit plan from the Debtors and assigned to JPMCB upon contributions made thereto by JPMCB.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)
Filed on: _____

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, **EXCEPT AS FOLLOWS:** If the amount shown is **DISPUTED, UNLIQUIDATED or CONTINGENT**, a proof of claim **MUST** be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim **in accordance with the attached instructions**, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED

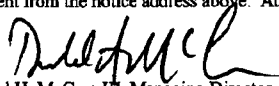
MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

19 Stockton
WMI original

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return ..



ATTACHMENT A

Stockton

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

In January 2009, JPMCB identified certain accounting activities in WMB's operations group in Stockton, California that, following further investigation, were determined to be fraudulent or otherwise improper. JPMCB acquired the operations group under the terms of the P&A Agreement.

Following a thorough and detailed investigation, an irreconcilable difference of approximately \$53.7 million was identified in the books of what had been WMB, which amount will be charged off by JPMCB. Based on JPMCB's investigation to date, the activities leading to this accounting difference were undertaken by one individual. In 1998, when such employee was employed by a third party service provider, this individual was responsible for check processing and back-office operational functions being performed for WMB. The relevant

functions were subsequently brought in-house to WMB and the responsible individual was hired by WMB from the service provider and became a bank employee.

Prior to the Petition Date, WMI maintained a Financial Institutions Bond which, among other things, provided insurance coverage for itself and its subsidiaries, including WMB, against fraud or other misconduct by employees, and that this insurance was in place during the period in which the improper conduct occurred. Under applicable law, WMB would be expected to have shared in the costs of such insurance in proportion to the rights and benefits it obtained thereunder.

JPMCB believes that WMB paid the entire premium charged by the carrier for the relevant policy, was a named insured under the policy, and is thus entitled to directly recover for all damages and losses incurred due to this misconduct, and that amounts paid under the policy to WMI in respect of such losses or damages are payable to JPMCB.

JPMCB also understands that the WMI consolidated Financial Institutions Bond policy may have been subject to a large self-insurance amount (retention or deductible) that may significantly reduce the total amount of coverage available for the resulting loss. This proof of claim is also being filed in respect of the full amount due to JPMCB from Debtors in respect of their appropriate share of any self-insurance liability (or of any retention or deductible having the effect of self insurance). JPMCB also reserves all rights and remedies against WMI for all damages or indemnity rights that may exist in WMI's favor against third parties to recover amounts in connection with matter.

The following document is submitted in support of this claim:

- Exhibit A. Blended Policy for Washington Mutual, Inc. for May 1, 2008 to May 1, 2009.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL 1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

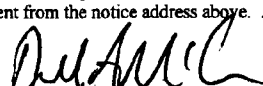
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Tax Refunds

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

This proof of claim discusses JPMCB's tax-related claims against the Debtor's estate. It should be considered in conjunction with and as an explanation of the attached Excel Spreadsheet entitled "Claims Against WMI Bankruptcy".

Background

The tax-related claims of JPMCB against WMI fall into three general categories:

- I. refunds expected to be paid by taxing authorities to WMI as agent for WMB and/or the FDIC (hereafter, for ease of reading of this proof of claim only, WMB and the FDIC are referred to collectively as "WMB")
- II. refunds already paid by taxing authorities to WMI as agent for WMB; and
- III. amounts due from WMI to WMB where WMI remitted funds to taxing authorities as agent for WMB and WMB over-reimbursed WMI for such remittances.

As previously noted, this proof of claim should be read in conjunction with the attached Excel Spreadsheet. The Spreadsheet is broken down into the three categories discussed above. This memorandum for clarity further divides Category I claims into sub-categories: (i) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims are either actively being litigated or where litigation may be pending; (ii) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims are being negotiated at either IRS Appeals or at Audit; (iii) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims relate to overpayments of taxes paid by WMI as agent for WMB; (iv) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims relate to expected carryback of net operating and

capital losses incurred by WMB in 2008; and (v) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims relate to excess credits in tax accounts, miscalculation of interest by taxing authorities, assessed penalties expected to be waived, and other similar items involving WMI's tax accounts maintained with taxing authorities as agent for WMB. Finally, each of these sub-categories of Federal refunds has associated sub-categories relating to state tax refunds.

The following document is submitted in support of this claim:

- Exhibit A. Excel Workbook "Washington Mutual Bank – Claims Against WMI Bankruptcy"

All other supporting documents, due to volume, are available upon request.

Discussion:

Category I:

Category I claims represent refunds expected to be paid by taxing authorities to WMI, where WMI is acting as agent for WMB. They have been sub-categorized into groups depending on the nature of the claim and where such claim is currently being evaluated. The following is a description of each sub-category and of each specific tax issue within each sub-category.

Sub-Category I – Federal Tax Litigation Claims:

WMI and WMB are the successors in interest to numerous thrifts, banks and thrift and bank holding companies. These financial institutions include, most notably, Providian Financial, parent to Providian Bank, Dime Bancorp Inc., parent to Dime Savings Bank, HomeSide Lending, Inc. (“HomeSide”), formerly the U.S. mortgage unit of National Australia Bank Limited, H.F. Ahmanson & Company, parent to Home Savings of America (“Home”), Great Western Financial Corporation, parent to Great Western Bank, and Keystone Holdings, Inc., parent to American Savings Bank. Each of the predecessor financial institutions were themselves successors in interest to numerous financial institutions, including, most notably, Coast Savings Financial, Inc., parent to Coast Savings Bank, and the Bowery Savings Bank, among others.

The following describes refund claims that are attributable to these predecessor financial institutions where the claims are currently being litigated and/or where litigation is pending.

1. Supervisory Goodwill Claims In Court: In general, these cases concern whether Home, in government assisted acquisitions of various failed thrift institutions, acquired a tax basis in “Branching Rights” and “Regulatory Accounting Principals Rights” (aka “RAP Rights”). Branching Rights refer to a right to establish branch offices in states outside of a thrift’s principal operating state. RAP Rights refer to a specific regulatory accounting principle that allowed goodwill recorded in acquisitions of certain troubled institutions to be included in a thrift’s regulatory capital calculation.

Washington Mutual, Inc., as Successor in Interest to H.F. Ahmanson & Co. And Subsidiaries v. The United States of America (United States District Court, Western District (October 2007): Case involves Home’s acquisition of Missouri Branching Rights, as well as Missouri and Florida RAP Rights, both acquired as part of a 1981 transaction facilitated by the Federal Home Loan Bank Board (“FHLBB”) and Federal Savings and Loan Insurance Corporation (“FSLIC”). The original complaint was filed January 12, 2006 in United States District Court, Western District of Seattle. The tax years at issue are 1990, 1992, and 1993.

WMI, as successor to Ahmanson, contends that it acquired tax basis in both the Branching Rights and RAP Rights. As outlined in the Complaint, WMI is requesting amortization deductions for RAP rights for tax years 1990, and 1992-1993. If WMI prevails, WMI should be entitled to additional amortization deductions in 1999-2005. Since both the Branching Rights and the RAP Rights were rights of Ahmanson’s banking subsidiary, Home,

and since Home was merged into WMB, WMB should be entitled to any benefits resulting from the litigation. Further, since the taxes paid by Ahmanson were attributable to the activities of Home, and were therefore paid as agent for Home, any refunds of such taxes should be the property of Home's successor, WMB.

In November of 1993, Home sold its deposit taking business in Missouri. As outlined in the Complaint, HFA is requesting an abandonment deduction for tax year 1993. Again, WMB, as successor to Home, should be entitled to any refunds received by its agent, WMI.

On August 12, 2008, the Court granted the Department of Justice's Motion for Summary Judgment. One additional open issue is related to the carryback of a net operating loss Ahmanson suffered in 1996, where such loss was carried back by Ahmanson to 1993. WMI is working with outside counsel to resolve the carryback claim. Once that issue is resolved, the Court will issue a final judgment. To date, outside counsel is still completing its formal analysis of the court's decision. Based on very preliminary discussions, an appeal to the Ninth Circuit is likely.

Washington Mutual, Inc. as Successor in Interest to H.F. Ahmanson & Co. and Subsidiaries v. The United States of America (The United States Court of Federal Claims) (March 2008): Case involves Home's acquisition of Illinois Branching Rights and RAP Rights as part of various transactions facilitated by the FHLBB and FSLIC.¹ The original complaint was filed March 31, 2008 in the United States Court of Federal Claims. The tax years at issue are 1991 and 1994.

WMI, as successor to Ahmanson, contends that it acquired tax basis in both the Branching Rights and RAP Rights. As outlined in the Complaint, WMI is requesting amortization deductions for RAP rights for tax years 1991 and 1994. If WMI prevails, WMI should be entitled to additional amortization deductions in 1997, and 1999-2005. Since both the Branching Rights and the RAP Rights were rights of Ahmanson's banking subsidiary, Home, and since Home was merged into WMB, WMB should be entitled to any benefits resulting from the litigation. Further, since the taxes paid by Ahmanson were attributable to the activities of Home, and were therefore paid as agent for Home, any refunds of such taxes should be the property of Home's successor, WMB.

In November of 1994, Home sold its deposit taking business in Illinois. As outlined in the Complaint, HFA is requesting an abandonment deduction for tax year 1994. Again, WMB, as successor to Home, should be entitled to any refunds received by its agent, WMI.

WMI is waiting for the Department of Justice to respond to the filed complaint. The case is required to go to Alternative Dispute Resolution after which, the parties will prepare a Joint Status Report. Based on preliminary discussions with outside counsel, it is anticipated that a Joint Status Report will ask the court to freeze the branching rights issue pending appeal.

¹ Case includes the amortization of RAP Rights associated with the 1981 Missouri/Florida acquisition as well as Home's acquisition of insolvent Thrift's in Illinois, Texas, New York and Ohio.

Washington Mutual, Inc. as Successor in Interest to H.F. Ahmanson & Co. and Subsidiaries v. The United States of America (The United States Court of Federal Claims) (April 2008): Case involves two issues. The first issue is Home's acquisition of Florida, New York and Ohio Branching Rights and RAP Rights, acquired as part of various transactions facilitated by the FHLBB and FSLIC.² The second issue is discussed in greater detail below. The tax years at issue are 1995 and 1998.

WMI, as successor to Ahmanson, contends that it acquired tax basis in both the Branching Rights and RAP Rights. As outlined in the Complaint, HFA is requesting amortization deductions for RAP rights for tax years 1995 and 1998. If HFA prevails, HFA should be entitled to additional amortization deductions in 1997, and 1999-2005. Since both the Branching Rights and the RAP Rights were rights of Ahmanson's banking subsidiary, Home, and since Home was merged into WMB, WMB should be entitled to any benefits resulting from the litigation. Further, since the taxes paid by Ahmanson were attributable to the activities of Home, and were therefore paid as agent for Home, any refunds of such taxes should be the property of Home's successor, WMB.

In 1995, Home sold its deposit taking business in New York and Ohio. In 1998, Home sold its deposit taking business in Florida. As outlined in the Complaint, HFA is requesting an abandonment deduction for tax years 1995 and 1998. Again, WMB, as successor to Home, should be entitled to any refunds received by its agent, WMI.

The second issue relates to a 1995 transfer from Home of \$13 billion of mortgage backed securities and deferred loan fees to its wholly-owned subsidiary, 1905 Agency. IRS required Home to recognize income on that transfer asserting that IRC § 351 does not apply to prevent the immediate recognition of all deferred fee income.

The original complaint was filed April 30, 2008 in the United States Court of Federal Claims. WMI is waiting for the Department of Justice to respond to the filed complaint. The case is required to go to Alternative Dispute Resolution, after which the parties will prepare a Joint Status Report. Based on preliminary discussions with outside counsel, it is anticipated that a Joint Status Report will ask the court to freeze the branching rights issue pending appeal and to allow the 1905 Agency issue to move forward. Based on further discussions with WMI representatives Curt Brouwer and Dora Arash, the 1905 claim has been severed from the Supervisory Goodwill claim and is in the discovery phase.

2. Supervisory Goodwill Claims Not in Court: Claims represent the same issues discussed above, just with respect to different tax years. Subsequent to the conclusion of the three current cases discussed above, claims covering a range of tax years were to be filed in the appropriate court. The claims again represent issues associated with activities of WMB and would again result in refunds that are the property of WMB.

3. 1905 Agency Claim (Court of Federal Claims) (April 2008): See discussion above.

² Case includes the amortization of RAP rights associated with the acquisition of insolvent Thrifts in New York as well as amortization of favorable financing received by Bowery, a New York Thrift.

4. *Ahmanson Obligation*: During 1997, Home Servicing of America, a subsidiary of Home, recognized a loss on the sale of preferred stock of Ahmanson Obligation Company, a subsidiary of Ahmanson. The loss was disallowed by the IRS. In addition, the IRS imposed a Section 6662 accuracy-related penalty.

On January 10, 2006, WMI paid the IRS for the loss claimed on the sale of Ahmanson Obligation Company stock.³ In June of 2006, an amended return was filed for tax years 1995, 1997 and 1998. The amended returns included Branching Rights claims as well as claims for the tax and penalty paid with respect to the stock sale loss. On May 27, 2008, the IRS denied the claim for a second time and issued a 30-day letter. A protest was filed on June 26, 2008 and requests consideration of new developments in the law, namely; Coltec Industries, Inc. vs. United States, 454 F.3d 1340 (4th Cir. 2006); The Black & Decker Corporation v. United States, 434 F.3d 1340 (4th Cir. 2006). The case has not yet been assigned to an Appeal Officer.

Sub-Category I – Unitary State Claims for Federal Litigation Claims:

As deductible items for federal tax purposes are generally deductible for state tax purposes, all of the items described above, except one, will generally result in state tax refunds that will be paid to WMI on behalf of WMB. The refunds will be attributable to so-called “combined return” and/or “consolidated return” states where WMI was the paying agent for WMB. The one exception is the Ahmanson Obligation Company stock sale loss; California taxes were not paid with respect to this issue. Accordingly, there is no potential refund associated with the stock sale loss. As it is unknown at this point whether additional taxes will be due for this issue, we do not reduce our state refund amounts for any potential exposure on this issue.

Sub-Category I – Federal Audit Cycle Claims:

WMI/WMB had Federal Income Tax receivables representing tax refund claims for periods ending prior to and including December 31, 2005. The refunds have been claimed either on amended returns or through the audit process between WMI and its subsidiaries and the various taxing authorities. The refunds are attributable to a host of issues. Some of the issues have been resolved with the IRS and refunds have already been paid. Those issues that have not been resolved, and thus represent additional potential refunds, are discussed individually below.

WMI 2001-2003 Audit Cycle:

1. *Abatement of Failure-to-Pay (File) Penalty*: For tax year 2003, WMI's federal tax return reflected an underpayment of tax. Consequently, WMI self-assessed a Failure-to-Pay Penalty. The IRS audited the 2001-2003 tax year and issued an RAR reflecting an overpayment of tax. As a result of the overpayment, the failure-to-pay penalty was erroneous. Although the IRS abated the penalty, the penalty has not been refunded. As the original tax was attributable to WMB's activities, and as WMB paid the penalty, the refund is the property of WMB.

³ Generally, a complaint must be filed 2 years after payment of tax. Although not known by JPMorgan Chase at this time, it is possible that WMI filed a complaint in an appropriate jurisdiction on or before January 10, 2009. Because of the possibility of a court filing, this issue is included in the *Federal Tax Litigation Claims* section.

Note: Items 2 through 7, below, represent deficiencies asserted by the IRS against WMI/WMB. The IRS offset the asserted deficiencies against refunds the IRS had agreed to pay to WMI/WMB (i.e., the IRS retained the agreed upon refunds). It is presumed that items 2 through 7 will be resolved in WMI/WMB's favor; therefore, the previously agreed upon refunds will be ultimately paid by the IRS. The vast majority of the previously agreed upon refunds are attributable to WMB and its subsidiaries. Accordingly, when or if such refunds are paid to WMI by the IRS, WMI will be collecting the refunds only as agent for WMB.

2. Transaction Costs: Whether pre-decisional investigatory costs incurred by Bank United, Dime, Ahmanson and Washington Mutual should be capitalized and amortized under IRC § 195, or alternatively should be deducted as ordinary and necessary business expense under IRC § 162. The IRS has contested the treatment of these costs, however, it is anticipated that such treatment will ultimately be settled substantially in Washington Mutual's favor.

3. Ahmanson Ranch Charitable Contribution: Charitable contribution deduction was disallowed based on the limitation which reduces deduction by amount that would have been long-term capital gain if property had been sold at fair market value. The IRS claimed that the property, know as Ahmanson Ranch, did not qualify as a capital asset at the time of sale to the State of California, but should have been classified as inventory. IRS has tentatively agreed to allow the full deduction.

4. REMIC Income: Washington Mutual conducted an extensive review of its REMIC tax returns filed in the 2000-2004 years. As result of the review, the company proposed various adjustments to its taxable income after the RAR had been issued. These adjustments were accepted by the IRS. Additionally, the IRS agreed to give up assessments against WMB for purported unreported REMIC income.

5. Concord Stock Contribution: On Appeal, the IRS has agreed that shares of Concord common stock contributed by WMB to the Washington Mutual Foundation were freely transferable on the date of contribution. Therefore the IRS has allowed a full fair market value deduction for contribution of the shares rather than a deduction limited to WMB's basis in the stock.

6. Partnership Distributions: Partnerships holding high value low basis assets completely or partially redeemed member interests with related party financial assets (debt securities). The effect of the transactions was to transfer the outside basis of partnership interest to the debt securities, triggering a step-up in basis in the assets in the partnerships. The debt securities were then recapitalized into equity. Question is whether the distributions lacked economic substance, were step-transactions, and/or were violations of anti-abuse regulations. IRS Exam required gain recognition on the transaction. IRS Appeals is currently examining depreciation deductions taken at the partnership level.

7. Grant Thornton Cost Seg Studies: Grant Thornton performed a Cost Segregation analysis of Washington Mutual's financial centers placed in service in 2000-2004. As a result of the study, Washington Mutual made a IRC § 481 adjustment and claimed additional depreciation expense from the allocation of costs from Sec 1250 to Sec 1245 property, and additional bonus

depreciation amounts. The IRS denied the accelerated depreciation reported or claimed for 2000-2004.

Note: Items 8 through 12, below, represent refund claims submitted by WMI/WMB to the IRS where the IRS has denied such claims. It is presumed that items 8 through 12 will be resolved in WMI/WMB's favor; therefore, the refunds will be ultimately paid by the IRS. As the vast majority of the refund claims are attributable to the activities of WMB and its subsidiaries, when or if such refunds are paid to WMI by the IRS, WMI will be collecting the refunds only as agent for WMB.

8. *Grant Thornton Cost Seg Studies:* See Item 7 discussion above.

9. *Transaction Costs:* See Item 2 discussion above.

10. *Section 9 Payments:* As a result of the Keystone Transaction, WMI and WMB are parties to an agreement with a predecessor of the FDIC (Federal Savings and Loan Insurance Corporation Resolution Fund), which generally provides that 75% of most of the federal tax savings and approximately 19.5% of most of the California tax savings attributable to American Savings Bank's utilization of certain tax loss carryovers of New West Federal Savings and Loan Association are to be paid by WMI/WMB to the FDIC.

The issue is whether Washington Mutual is entitled to deduct these tax benefit sharing payments remitted to the FDIC. Taxpayer reached a tentative settlement with the IRS Appeals which considered the risks of litigation under IRC § 483 and therefore allowed an interest deduction equal to 20% of the "Section 9" payments. The losses were utilized by WMB to offset its tax; therefore, any deduction (and associated refund) is properly that of WMB.

11. *IPO Costs:* The IRS disallowed full deductions claimed on an amended 2002 return for costs incurred by Dime and HomeSide in the initial public offerings of their stock. The costs had been capitalized and no portion deducted at the time Washington Mutual acquired all of the outstanding stock of Dime and HomeSide. The IRS position is that such costs do not reduce proceeds from the stock issuance but must be capitalized.

12. *Contested Liability Trust:* The CLAS transaction generated deductions in 1999 via the contribution of assets to a trust. Washington Mutual settled the matter with the IRS during the 1998-2000 cycle at less than 100% favorable. In 2002, the trust was unwound. Washington Mutual is entitled to a deduction in 2002 of income previously taxed by virtue of the less than 100% favorable settlement. The trust was a subsidiary of, and all the assets contributed to the trust were owned by, WMB. Thus any adjustment of income is attributable to WMB.

WMI 2004-2005 Audit Cycle

All of the below described items represent income or deductions attributable to WMB's activities or the activities of entities merged into WMB. Accordingly, all the items represent refunds that are the property of WMB but which will be paid to WMI as agent for WMB. We note that, on an overall basis, 2004 reflects a net payable to the IRS and, thus, no refunds are expected. 2005, on an overall basis, reflects a net receivable from the IRS. Such receivable, when received by WMI as agent for WMB, is the property of WMB.

1. Carryforward Adjustments: This item is comprised of a number of different issues, each briefly described below. All carryforward adjustments have been accepted by Exam through the issuance of a Notice of Proposed Adjustment ("NOPA"). All of the issues related to the activities of WMB or those of entities merged into WMB.

OID/Interest Income – Loan Sales (NOPA #1): In the 1993-1996 audit of Great Western, Great Western Bank (merged into WMB) agreed to the application of § 1286 to loan sales originated between 1988 and 1990. For those loans sold in 1991 or 1992, a proposed change in calculations allowed the taxpayer to reduce the net income from the sales of loans for 1988 – 1992.

Amortization Florida 21 Branch Core Deposit (NOPA #2): In 1987, Great Western Bank acquired 21 branches in southern Florida. There was an issue as to the value and life of core deposits but in Appeals a settlement was reached and a deduction was allowed.

Leasehold Improvements (NOPA#3): Leasehold improvement expense deductions as capital expenditures. However, even though the expenses were not deductible, they were depreciable over a period of 39 years on a straight line method.

Core Deposit Intangible Amortization (NOPA #4): In the 1988-1992 audit cycle of Great Western, changes were made to the amortizable value and lives of intangible assets (called core deposit) for four bank acquisitions. In Appeals, there was a settlement with recalculations to the remaining amortization amounts - adjustments to income were necessary to reflect the agreed changes.

Excess Mortgage Servicing Rights (NOPA#5): This is a carryover from 1993-1996 Great Western cycle where there was a 906 agreement resolving a dispute regarding the correct accounting for the excess servicing rights. It was concluded that the income from the mortgage servicing rights must be reduced based on the changes made and agreed for 1993-1996.

Amortization of Core Deposit Intangibles (NOPA#6): Issue reflects the agreed rollover adjustments from the 1990-1993 cycle of Ahmanson. WMI is able to deduct additional amounts for the amortization of core deposits.

Home Excess Servicing Amortization (NOPA #7): In the 1990-1993 cycle of Ahmanson, there was an adjustment related to the basis of the excess servicing generated in 1990. Therefore the amortization expense was adjusted as well. For the purposes of settlement, it was determined that: 1. WMI is allowed a 15% discount rate in computing the basis of the servicing and the excess servicing strip; and 2. WMI is permitted to report the remaining balance of the interest income and OID in 2004.

Coast Savings Excess Servicing Amortization (NOPA#8): Ahmanson acquired Coast Financial, parent to Coast Savings Bank, in 1998. Coast Savings Bank merged into Home, and Home was subsequently merged into WMB. There was an excess servicing asset tax basis and that amount had not been incorporated into Home's M1 schedule. As agreement was reached allowing for an adjustment based on the PRM percentage, resulting in a decrease to taxable income. The remaining basis carried over to WMB.

Home Excess Rights Amortization (NOPA#9): This NOPA addresses adjustments related to excess deductible basis maintained by Home (prior to merger into WMB) that had not been amortized. Additional amortization deductions were allowed.

Inventory Reserves (NOPA#11): WMI acquired Ahmanson in 1998. Ahmanson had a subsidiary, Ahmanson Residential Development (ARD). Prior to the acquisition, ARD had established reserves against its real estate held for sale or investment. The book reserves were reversed for tax purposes and subsequent charges were deducted for tax purposes. The balances were transferred to Washington Mutual and netted into other property balances. In the 2001-2003 cycle, the Service agreed that tax deductions for the charge offs were allowable, but that such deductions should have been claimed when the property accounts were closed out in 2004.

1997 REMIC Carryover (NOPA#12): Great Western Bank was merged into WMB in 1997. WMB transferred certain Great Western loans to a REMIC. In return, WMBFA received several classes of debt. For book purposes, WMI classified certain classes of debt using the Lower of Cost of Market (LOCOM) valuation technique. WMI originally requested a \$99 million loss on a 1997 amended return but the full amount of the loss was denied. The denial of the loss resulted in an overstatement of income in subsequent years. WMI resolved the issue by proposing to amortize the balance of the LOCOM deduction (then \$88 million).

PWC – Cost Seg Study (NOPA#16): This is a carryover issue from 2000. In 2000, Washington Mutual filed a 3115 to change the accounting method for the depreciable lives of assets based upon costs segregation studies conducted by PWC and KPMG. The purpose of the study was to reclassify §1250 real property (with 39 yr. lives) as § 1245 tangible property (with 15, 7 or 5 yr. lives). The IRS raised issue with the studies and in Appeals, there was a resolution.

Odd-Days Interest (NOPA#21): Odd-days interest is interest attributable to part of the first payment period when that period is longer than a regular payment period. It is a finance charge related to the short or long days for a loan and must be taken into account. Washington Mutual did not accurately report the correct odd-days interest from Home Savings on the originally filed returns for 2001-2003. Washington Mutual amended its 2001 return by adding an amount into income because the carryover adjustment was discovered after the return had been filed.

Provision – Government Loan Loss (NOPA#49): This is a carryover adjustment resulting from the 2001-2003 cycle. In that cycle, the IRS disallowed a bad debt deduction on the federal return. Although the deduction was appropriate per GAAP, Exam determined that there was no economic performance, therefore no deduction was available for tax purposes. Exam agreed that economic performance occurred in 2004.

2. MSR Gains and Amortization (NOPA#35): Washington Mutual filed an informal claim October 27, 2007, requesting an adjustment of its 2004 MSR Gains and the related Amortization, consistent with the methodology agreed upon during the 2001-2003 cycle. The claim reflects the differences in book and tax methods of allocating loan basis between the MSR retained, and the underlying mortgage sold. For tax purposes, only the “excess servicing rights” are required to be capitalized. The portion of the book gain deferred for tax purposes reverses in subsequent years as a reduction in tax amortization expense relative to book amortization.

3. Loan Costs and Fees (NOPA#29-33): Washington Mutual filed an amended tax return on April 8, 2006, and a summary claim on Feb 28, 2008, regarding 2004 and 2005 Loan Fees and Loan Origination Costs. The claim was filed to make the following corrections to the tax returns as filed: (1) apply carryover adjustments from the 2001-2003 cycle, (2) revise the FAS 91 adjustments and reversals based on a review of balance sheet rather than P&L accounts.

4. Loan Costs and Fees – Prior Years (NOPA#50): On a memorandum dated July 7, 2008, Washington Mutual reported additional income for 2004 and 2005. The adjustments were the result of an ongoing review of accounts by the Corporate Tax Department, and reflect the final reconciliation of balance sheet accounts as of December 31, 2006.

5. HomeSide Built-in Loss (NOPA#22): Washington Mutual acquired HomeSide in 2002. In an amended return for 2002, Washington Mutual proposed an adjustment to income relating to the § 382 limitation on recognition of built-in losses. Washington Mutual assumed that the MSR assets acquired in the HomeSide transaction were sold, but it was determined later that the MSR asset related to HomeSide had not sold but was rather transferred within the consolidated group. This adjustment was calculated applying the §382(h)(7) 5 year limitation period. Since the HomeSide MSRs were not sold in 2002, the recognized built-in loss with respect to these MSRs in 2002–2006 consists of (1) the amount of amortization Washington Mutual could claim on the MSR (by stepping into the shoes of HomeSide) and (2) the purchase accounting adjustments related to the acquisition. Since it is impossible to determine the amount that any realized built-in loss exceeds the net unrealized built-in loss, only the §382 limitation amount was allowed.

6. Section 9 Payments (NOPA#10R): See discussion of *Section 9 Payments* (Sub-Category I B – Federal Audit Cycle Claims).

7. Mark-to-Market: A memorandum was submitted to the IRS on November 30, 2007. The following claims were included in the memorandum and were accepted by the IRS:

MSR Hedges (NOPA#36): This adjustment is based on the IRS's review of revised computations of MSR Hedges. The adjustment is based on the IRS conclusion that Washington Mutual's method of accounting for hedging gains and losses did not clearly reflect income because the timing of the income, deduction, gain or loss from the hedges did not correspond to the period of the MSR income stream.

Rate Locks (NOPA#37): For GAAP purposes, Interest Rate Lock Commitments ("Rate Locks") are subject to MTM accounting for derivatives under FAS 133. For tax purposes for these years, the Rate Locks were identified as assets held for investment and not subject to MTM. The Sch M items for the book – tax differences were calculated by comparing year-end balances to prior year-end balances for GL accounts 32911 and 52111.

Warehouse Loans (NOPA#38): The warehouse loans were loans originated or purchased by Washington Mutual to be sold in the secondary market. For GAAP purposes, the loans were accounted for under FAS 65 at Lower of Cost or Market (LOCOM). For tax purposes, the loans were assets held for sale and subject to MTM. The Accounting group at Washington Mutual did not capture the 2004 tax MTM data on the warehouse, as the loans were increasing in value due to falling interest rates and no GAAP adjustment was required under LOCOM; however, for tax

Washington Mutual should have included income or MTM. The IRS accepted the revised computation.

Hedges on Liability (NOPA#39): For GAAP purposes Washington Mutual did record MTM adjustments on certain of its liabilities (our borrowings); however, such adjustments were recorded net of the MTM adjustments on the hedges associated with the borrowings under FAS 133. Because the hedges were perfect during these years, no gain or loss was recorded in the income statement. For tax purposes liabilities (borrowings) are not subject to MTM under IRC Sec. 475, since borrowing are not "securities". Washington Mutual did not MTM the associated hedges for tax purposes. Accordingly, no M adjustment was necessary. The IRS accepted the revised computations.

8. Partnership Adjustments (NOPA#34): Pacific Center Associates is a partnership which consists of five partners, all of which were subsidiaries of Washington Mutual. The original Form 1065 was timely filed. It was later determined that several items needed to be included or revised on the return. The partnership filed an amended return to report the following items: (1) gain on sale of Irvine property assets, (2) recapture of prior year depreciation, and (3) rental income. The audit adjustment reflects these changes.

9. Depreciation (NOPA#13): This adjustment is the correction of an error reported on the 2004 return. Washington Mutual reported and deducted the cumulative depreciation of its fixed assets instead of the current depreciation amounts.

10. General Reserves (NOPA#14): Washington Mutual filed an informal claim Dec 20, 2007 requesting adjustments related to several reserve accounts such as Legal Reserves, Servicing Reserves, and Inventory Reserves. The reserves represent estimates of future expenses for GAAP financial reporting purposes. These amounts were not included in any Sch M adjustments.

11. Other Adjustments:

Amortization 1 (NOPA#15): This adjustment is the correction of an error. Amortization expense for Purchase Credit Card Receivables, Alliance Contracts and Non-compete Covenants are not deductible for tax. Accordingly, Washington Mutual reported the book expense as Sch M for Amortization. Washington Mutual also reported the same amount as a Sch M for Purchase Accounting. This NOPA adjusts for double counting of the income.

Amortization 2 (NOPA#17): This adjustment is also the correction of an error. Washington Mutual inadvertently deducted one month of amortization for intangibles acquired in the purchase of PNC Mortgage. This NOPA allows Washington Mutual to take a full year's amount of amortization on the asset.

Transaction Costs (NOPA#18): Adjustment for transaction fees paid to Morgan Stanley and Lehman Brothers. These costs were previously deducted but on audit were determined to be non-deductible as facilitative services.

REMIC Income (NOPA#23/#24R1): In December 2006, Long Beach Mortgage Co filed amended REMIC forms 1066 and Sch Q for the 2001-2003 years that impacted the amount of

income to be reported in 2004 and 2005. In March 2007, Long Beach provided additional corrections for REMIC residual income for 2001-2003. These corrections also impacted the amount of income to be reported in 2004 and 2005.

Amortization of Project Saturn Fees (NOPA#26): Washington Mutual acquired Providian Financial Corporation and affiliates effective Oct 1, 2005. The IRS concluded its audit of Providian for the 2000-2004 years. Item represents a carryforward adjustment from the audit allowing an additional 2005 deduction for amortization of Project Saturn structuring fees.

Amortization of Broker Fees (NOPA#27): Washington Mutual acquired Providian Financial Corporation and affiliates effective Oct 1, 2005. The IRS concluded its audit of Providian for the 2000-2004 years. Item represents a carryforward adjustment from the audit allowing an additional 2005 deduction for amortization of brokers' fees.

Transaction Costs-Keystone & Dime (NOPA#40): The taxpayer filed Form 3115 requesting a Change in Accounting Method for the treatment of "pre-decisional investigatory costs." The IRS granted the request and allowed a deduction for expenses incurred prior to the time decisions were made as to "whether and which" an acquisition is made.

HomeSide Net Unrealized Built-in Losses (NOPA#41): In 2002, Washington Mutual acquired the assets and stock of HomeSide Lending. From Oct 1, 2002 through Nov 15, 2002 HomeSide filed a short period return. Subsequent to Nov 15, HomeSide was merged into WMBFA. After further review of the transaction, Washington Mutual determined corrections were needed and filed an amended return to reflect the changes. This adjustment reflects the Net Unrealized Built-in Loss as accepted by the IRS.

Amortization 3(NOPA#53): Item represents a correction of an error in signage on the Sch M-1 item as filed.

Partnership Income (NOPA#47): Various adjustments to income from Washington Mutual's interests in partnerships and LLCs. The income was not included on the original returns because the K-1's were received after the returns were filed.

12. Credits (NOPA#42, 46, 47): Increase in General Business Credits as a result of interests in partnerships and LLCs. The credits were not included on the original returns because the K-1's were received after the returns were filed.

Sub-Category I – Unitary State Claims for Federal Adjustments:

As deductible items for federal tax purposes are generally deductible for state tax purposes, all of the items described above will generally result in state tax refunds that will be paid to WMI on behalf of WMB. The refunds will be attributable to so-called "combined return" and/or "consolidated return" states where WMI was the paying agent for WMB.

Sub-Category I – Federal Overpayment Claims:

On its 2007 Federal Income Tax Return, WMI elected to apply \$40 million of its \$274 million overpayment to its expected 2008 federal income tax liability. As WMI's 2008 Federal

Income Tax Return has not yet been prepared, it is possible that the \$40 million applied payment will ultimately be refunded to WMI. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, the refund is properly the property of WMB. The remaining \$234 million overpayment from 2007 is discussed under Category II, below.

Sub-Category I – Unitary State Overpayment Claims:

On its 2005 to 2007 state tax returns, WMI elected to have overpayments refunded. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, the refunds are properly the property of WMB.

Sub-Category I – Federal Loss Carryback Claims:

As a result of the sale of all of its assets to JPMCB, WMB will realize a significant loss on its 2008 Federal Income Tax Return. The loss will be comprised of both ordinary and capital losses, where such losses may be carried back. Additionally, due to the size of the loss carryback, WMB will have Federal tax credits that were utilized in one year available for carryback to the preceding year, since Federal tax credits generally can be carried back one year. Currently, net operating losses can be carried back two years and capital losses can be carried back three years, however, President Obama's budget proposal may permit net operating losses to be carried back beyond two years. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, all amounts received by WMI related to loss and/or credit carrybacks are the property of WMB.

Sub-Category I – Unitary State Carryback Claims:

As a result of the sale of all of its assets to JPMCB, WMB will realize a significant loss on its 2008 state income tax returns. The loss will be comprised of both ordinary and capital losses. Ordinary losses and capital losses can be carried back up to three years in certain jurisdictions. There are not credits significant enough to consider. As noted under Federal Loss Carryback Claims section, President Obama's budget proposal may permit net operating losses to be carried back beyond the period to which they may be carried back now. Certain jurisdictions may automatically conform to any new federal law; accordingly, certain jurisdictions' carryback periods may be extended. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, all amounts received by WMI related to loss carrybacks are the property of WMB.

Sub-Category I – Miscellaneous Tax-Related Claims:

Prior to WMB's closure by the Office of Thrift Supervision and the appointment of the FDIC as receiver, Washington Mutual was conducting a review of tax account transcripts (i.e., statements of account maintained by taxing authorities detailing final assessments made against taxpayers, payments made, taxes recorded as due from return and estimated tax filings, etc.). While the review was never completed, certain items had been identified which represent net refunds due to WMI as agent for WMB. The following is a brief summary of each of the identified items. Upon completion of the review, certain additional items could be identified which would change the amount of the total refund due to WMI as agent for WMB for both federal and state tax purposes.

Federal Transcripts

1998: A credit balance was identified as due to WMI/WMB, with associated interest. The credit relates to taxes associated with the activities of WMB and accordingly any refund of such amount should be the property of WMB rather than WMI.

2002: The IRS erroneously posted an assessment to the account of WMI/WMB in advance of posting an overpayment from a prior year, thus causing interest on amounts otherwise owed by WMI/WMB to be overpaid. Additionally, an overpayment of tax was identified that, net of two amounts owed by WMI/WMB, results in a refund due to WMI/WMB. The interest and the overpayment, net of amounts identified on the transcripts as due to the IRS, represent refunds due to WMI as agent for WMB, as all items relate to taxes associated with the activities of WMB rather than WMI.

2003: As a result of under-estimating its Federal Income Tax liability for 2003, WMI/WMB incurred and paid an estimated tax penalty. Subsequent to the filing of the 2003 original return, numerous deductions of WMB not claimed on the original return were identified and amended returns were filed claiming such deductions. The subsequently claimed deductions are sufficient to eliminate the under-payment of estimated taxes. It is possible that the estimated tax penalty will be abated and refunded by the IRS to WMI as agent for WMB. Such refunds are properly those of WMB since all of deductions are related to WMB's activities.

California Transcripts

1998: Ahmanson engaged in a series of transactions involving its real estate owned. The real estate was owned by Home, Ahmanson's banking subsidiary. Home was ultimately merged into what is now WMB. The transactions resulted in losses being claimed for both Federal and state tax purposes. The State of California initially disallowed all of the claimed losses. After paying the taxes and protesting the State's action, WMI/WMB was successful in realizing the deductions. For various reasons, WMI elected to leave the resulting refund on deposit with the State. The amount represents a refund that owed by the State to WMI as agent for WMB, as WMB owned all the properties that gave rise to the claimed deductions.

2006: As noted previously, Washington Mutual acquired H.F. Ahmanson, Great Western, and Keystone. The banking operations of the acquired entities were heavily concentrated in California and incurred significant California tax. The State of California asserted that the banking operations of the acquired entities were instantly unitary with the operations of WMB, causing WMB's tax liability to be significantly increased in the first year after each acquisition. WMI/WMB protested the findings of the State and ultimately reached a negotiated settlement with the State, resulting in a refund. As all of the assessed tax related to the banking operations of the acquired entities, and as all of the banking operations of the acquired entities were merged into WMB, the refund is properly that of WMB.

2008: WMI/WMB has a potential constitutional claim against the State of California for the State's taxation of certain income earned by WMB in past years. As WMI asserts that it is the only entity within the Washington Mutual group eligible to act as agent in California with respect to past years, WMI could attempt to file the claim and secure the associated refund of

taxes paid on such income. However, as all of the income in question was earned by WMB, any such refund would be the property of WMB.

Category II:

For Federal Income Tax purposes, pursuant to Treasury Regulation § 1.1502-77, and for unitary and/or consolidated return states, WMI was the taxpaying agent for the rest of the Washington Mutual group of entities. As agent for the group, it is customary for WMI to be recipient of any refunds paid by taxing authorities, regardless of which entity to which the tax relates. However, WMI was not an entity with any material operations; the vast majority of taxes incurred by Washington Mutual were attributable to the activities of WMB and its subsidiaries. Accordingly, and as noted repeatedly above, any refunds received by WMI are merely received as agent on behalf of WMB.

The amounts in Category II represent refunds, Federal and state alike, received by WMI where such refunds have been retained by WMI. Again, since WMI was merely the agent of WMB, and since the vast majority of taxes of the group were attributable to the activities of WMB and its subsidiaries, all refunds received by WMI are WMB's property.

Federal Refunds Received by WMI - Dime '99 to '01 Audit Cycle: In January of 2002, Dime Bancorp Inc., which was merged into WMI, and Dime Savings Bank, which was merged into WMB, were acquired by Washington Mutual. In Dime's last stand-alone audit cycle, Dime Bancorp Inc. filed refund claims for tax years 1999-2001 related to a capital loss carryback. On audit, the IRS initially disallowed the loss carryback and also disallowed Dime Bancorp's deduction of payments made to terminate a merger agreement with Hudson United Bancorp. The termination payment was made because Dime broke-off its merger with Hudson United in order to merge with Washington Mutual. The IRS' position was that such termination payments were required to be capitalized. The Issues were settled at Appeals and a net refund was approved by Joint Committee. On September 23, 2008, the US Treasury issued refund checks. Such refund checks were received on or about September 29, 2008 and WMI took possession of the checks shortly thereafter.

Federal Refunds Received by WMI - 2007 Federal Tax Overpayment: On its 2007 Federal Income Tax Return, filed in September of 2008, WMI reflected an overpayment of \$274.5 million; \$40 million of the overpayment was applied to WMI's 2008 tax year, and \$234.5 million was requested to be refunded. On September 30, 2008, the IRS wired the \$234.5 million to WMI.

State Tax Refunds Received by WMI: As discussed previously, Washington Mutual under-reported its deductions on its Federal Income Tax Returns from 1998 through 2004. Correspondingly, Washington Mutual under-reported its deductions on its state income tax returns for the same period. State amended returns were filed for each of the years. Most of the state refunds reflected on those amended returns remain outstanding; however, certain of the refunds have been received by WMI as agent for WMB. Additionally, Washington Mutual reflected overpayments on certain of its state income tax returns for 2006 and 2007. Certain of these overpayments were refunded by the states to WMI as agent for WMB. Since the vast majority of the activities giving rise to the tax payments, the amended return refunds, and the

overpayments are attributable to WMB and its subsidiaries, the refunds received by WMI as paying agent are the property of WMB.

Category III:

WMI and WMB, along with most of the other entities within the Washington Mutual group, maintained tax receivable and tax payable accounts. WMI, as tax agent for the group, would pay taxes on behalf of the group for Federal Income Tax purposes and for unitary and consolidated return state tax purposes. Upon paying a taxing authority, WMI would credit its cash account and would record a debit in its Federal Income Taxes Payable account. As noted previously, the tax liability of the Washington Mutual group was almost exclusively attributable to the activities of WMB. As part of its tax provision process, WMB would record a credit to its Federal Income Taxes Payable account and a debit to its Federal Income Tax Expense. WMB would as a matter of course settle its Federal Income Tax Payable account by remitting cash to WMI in satisfaction of its tax obligation (credit cash and debit Federal Income Taxes Payable; thus, zeroing out the account). As of September 25, the day of WMB's receivership, WMI reflected a current payable in its Federal Income Tax Payable account, and WMB reflected a current receivable in its Federal Income Tax Payable account. Such balances suggest that WMB in fact overpaid WMI for taxes WMI outlaid on WMB's behalf, since WMI had no tax liability (or tax refunds) attributable to its own activities. The balance in WMI's tax account represents overpayment of taxes by WMB to WMI and, thus, represents the property of WMB, since WMI was merely the tax paying agent for the Washington Mutual group.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that

prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(9).

Amount entitled to priority:

\$ See Attachment A

FOR COURT USE ONLY

RECEIVED

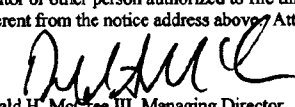
MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Trust Securities

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

On January 30, 2006, WMB submitted a Notice of Establishment of an Operating Subsidiary (the "Notice") to the OTS and the FDIC regarding the establishment of a new operating subsidiary, Washington Mutual Preferred Funding LLC ("WMPF"), for the purpose of issuing preferred securities to investors. WMPF's assets consisted of indirect investments in various residential mortgages and home equity loans and other permitted investments. WMPF in turn issued preferred securities to certain issuer trusts (the "Issuing Trusts") formed by WMI and its affiliates that entitled the holders thereof to, among other things, a liquidation preference against the assets of WMPF. Between March 2006 and October 2007, the Issuing Trusts issued securities (the "Trust Securities") to investors in the aggregate face amount of approximately \$4 billion. The holders of the Trust Securities, in effect, had a pass-through economic interest in the preferred securities of WMPF held by the Issuer Trusts.

Under the terms of the various agreements governing the Trust Securities, the Trust Securities were automatically exchangeable into depository shares representing preferred stock of WMI upon the OTS declaring the occurrence of an Exchange Event, which included WMB becoming undercapitalized or subject to receivership.

As set out below, the Trust Securities qualified as regulatory core capital of WMB under applicable banking laws and regulations on the basis of specific OTS approvals obtained and requirements imposed governing their issuance and treatment. In its Notice to the OTS and the FDIC, WMB sought confirmation from the OTS that the Trust Securities would qualify for inclusion in the core capital of WMB. In order for the Trust Securities to be treated as core capital of WMB when issued, the OTS required that the Trust Securities had to be structured in a manner that assured they would become property of the regulated institution upon the automatic exchange described above. On February 23, 2006, WMI committed to the OTS in writing to contribute the Trust Securities to WMB and stated that WMI "hereby undertakes that if, as a

result of a[n] [Exchange] Event,” WMI exchanges its preferred stock for the Trust Securities, “WMI will contribute to WMB the [Trust Securities].” (John F. Robinson letter to Darrel Dochow, dated February 23, 2006.)

The next day, on February 24, 2006, the OTS approved the inclusion of the Trust Securities in the core capital of WMB. (Darrel Dochow letter to John F. Robinson, dated February 24, 2006.) WMI’s written commitment to contribute the Trust Securities to WMB in exchange for including the Trust Securities in the core capital of WMB constituted a capital commitment to a federal depository institutions regulatory agency or its predecessor, which was deemed assumed as of the Petition Date under 11 U.S.C. section 365(o). That commitment also constituted a binding agreement (the “Contribution Agreement”) of WMI. At all relevant times, it was the Contribution Agreement that permitted WMB to include the Trust Securities in its regulatory core capital. At all relevant times, WMB included the amount of the Trust Securities as regulatory core capital. The Trust Securities have at no time been beneficially owned by WMI because they have always been subject to WMI’s unconditional obligation to contribute the Trust Securities to WMB at the direction of the OTS as a necessary corollary to the treatment of the Trust Securities as core capital of WMB. The issuance of the Trust Securities and the Contribution Agreement were duly authorized by all requisite corporate action on the part of WMI and WMB.

On September 25, 2008, in a letter to WMI, the OTS declared that an Exchange Event had occurred and directed an immediate exchange of the Trust Securities for WMI preferred stock. (Darrel Dochow letter to Steve Frank and Alan Fishman, dated September 25, 2008.) WMI responded to the OTS letter later on September 25, 2008, confirming the exchange and contribution. (Steve Rotella letter to John Bisset and Benjamin Franklin, dated September 25, 2008.)

As required by the Contribution Agreement, on September 25, 2008, WMI contributed the Trust Securities to WMB pursuant to an Assignment Agreement, which, among other things, provided that effective September 25, 2008, WMI irrevocably transferred “all of [WMI’s] right, title and interest, whether now owned or hereafter acquired, in and to the [Trust] Securities” to WMB. Furthermore, upon execution, WMI assigned to WMB all present and future “rights and benefits arising out of the [Trust] Securities which come into the possession of [WMI].” (Assignment Agreement between WMB and WMI, effective September 25, 2008 at 3.)

Under the express terms of the P&A Agreement, JPMCB purchases “all right, title, and interest of the Receiver in and to all of the assets . . . of [WMB] whether or not reflected on the books of [WMB] as of Bank Closing,” which includes WMB’s and the Receiver’s rights to receive the Trust Securities, a transfer that was effected on September 25, 2008. The Receiver thus sold the Trust Securities to JPMCB on September 25, 2008 under the P&A Agreement and therefore JPMCB is the sole owner of all equitable and beneficial right, title and interest in the Trust Securities.

To the extent WMI ever held or now holds any interest in the Trust Securities—and JPMCB asserts that WMI had and has no legally cognizable interest in them—that interest has never consisted of anything more than bare legal title (in accordance with 11 U.S.C. Section 541(d)) to the Trust Securities for the moment in time of the exchange and contribution.

JPMCB understands that the automatic transfer of the Trust Securities to WMB that occurred on September 25, 2008 has not been evidenced by any recorded entries on the books and records of the Issuing Trusts and/or their trustees or the Depository Trust Company (“DTC”), as applicable. JPMCB is entitled to the ministerial remedy of correction of the books and records of the Issuing Trusts and/or their trustees or at DTC to properly reflect the completion of the Transfer prior to the filing of these Chapter 11 cases.

In addition, JPMCB is entitled to be indemnified and held harmless by WMI for any liabilities associated with the issuance, exchange, contribution or recovery of the Trust Securities, including without limitation any claims regarding authorization, enforceability, avoidability or inadequate disclosure. JPMCB also asserts a claim for unjust enrichment for the value recognized by the Debtors as a result of treatment of the Trust Securities as core capital.

The following documents are submitted in support of this claim:

- Exhibit A. List of the Trust Securities.
- Exhibit B. Letter from John F. Robinson (WMI) to Darrel Dochow (OTS), dated February 23, 2006.
- Exhibit C. Letter from Darrel Dochow (OTS) to John F. Robinson (WMI), dated February 24, 2006.
- Exhibit D. Letter from Darrel Dochow (OTS) to Steve Frank and Alan Fishman (WMI), dated September 25, 2008.
- Exhibit E. Letter from Steve Rotella (WMI) to John Bisset and Benjamin Franklin (OTS), dated September 25, 2008.
- Exhibit F. Assignment Agreement between WMB and WMI, effective September 25, 2008.
- Exhibit G. Relevant Minutes of WMI and WMB Board of Directors meetings, dated January 17, 2006, February 17, 2006, October 17, 2006, February 27, 2007, August 21, 2007 and October 16, 2007.

This proof of claim is submitted as a priority claim under section 507(a)(9) of the Bankruptcy Code because JPMCB’s claim is based upon a commitment by WMI to the OTS of the Trust Securities to maintain the regulatory capital of WMB.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB’s rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including

without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Securities Inc.
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form. **EXCEPT AS FOLLOWS:** If the amount shown is **DISPUTED, UNLIQUIDATED or CONTINGENT**, a proof of claim **MUST** be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

FOR COURT USE ONLY

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

43 Underwriters (re Gibson Dunn)
WMI original

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



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ATTACHMENT A

Underwriter Indemnity (Pending Litigation)

JPMorgan Securities Inc. ("JPMSI") files this claim in its capacity as an underwriter of certain securities offerings by Washington Mutual, Inc. ("WMI") or one or more of its affiliates. JPMSI hereby incorporates by reference herein the following proofs of claim filed or to be filed by the lead underwriter (other than JPMSI) of the offering referred to below on behalf of itself and all other underwriters of such offerings.

(i) Proof of claim by Goldman, Sachs & Co. as co-lead underwriter of a public offering of securities by WMI in September 2006, which is subject of a class action litigation entitled In re Washington Mutual, Inc. Securities Litigation, No. 2:08-MD-1919 MJP, pending in the United States District Court for the Western District of Washington (the "Class Action");

(ii) Proof of claim by Morgan Stanley & Co. Incorporated as co-lead underwriter of a public offering of securities by WMI in December 2007, which is subject of the Class Action; and

(iii) Proof of claim by Morgan Stanley & Co. Incorporated as co-lead underwriter of a public offering of securities by WMI in December 2007, which is subject of the Class Action.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMSI's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMSI from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtor for any claims of third parties that may be asserted against JPMSI.

JPMSI reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMSI that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtor's possession, or of such quantity that their submission herewith would be administratively impracticable and (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMSI that prevents their lawful inclusion in a filing of this nature without additional steps being taken

to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMSI. In each such case, JPMSI includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMSI on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtor now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtor has any rights in such property. This claim is submitted to assert and preserve this claim in the Debtor's pending bankruptcy case, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMSI or any other person has waived or intends to waive any rights or claims afforded it under any other agreement with persons other than the Debtor or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Securities Inc.
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

Amount entitled to priority:

\$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

44 Underwriters Indemnity
WMI original

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000264

ATTACHMENT A

Underwriter Indemnity (No Pending Litigation)

JPMorgan Securities Inc. ("JPMSI") files this claim in its capacity as an underwriter of certain securities offerings by Washington Mutual, Inc. ("WMI") or one or more of its affiliates as specified below.

JPMSI's claim consists of the following elements:

- a) JPMSI served as joint lead underwriter of the March 17, 2004 Offering, a public offering of \$750,000,000 principal amount of 4.625% Subordinated Notes due April 1, 2014 by WMI (the "March 17, 2004 Offering") pursuant to the terms of an underwriting agreement dated March 17, 2004 (see Exhibit A). Section 7(a) of the underwriting agreement required WMI to indemnify JPMSI and the underwriters of the March 17, 2004 Offering "against any losses, claims, damages or liabilities, joint or several, . . . insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, the Prospectus, or any amendment or supplement thereto, or any related preliminary prospectus or preliminary prospectus supplement, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred . . ." JPMSI submits this claim on behalf of itself and the following underwriters of the March 17, 2004 Offering: Lehman Brothers, Inc., Morgan Stanley & Co. Incorporated, BNY Capital Markets, Inc., Keefe, Bruyette & Woods, Inc. and The Williams Capital Group, L.P. This proof of claim is filed to preserve JPMSI's and the other underwriters' rights to seek indemnity and/or contribution in connection with the March 17, 2004 Offering. As of the date of the filing of this claim the amount remains unliquidated.
- b) JPMSI served as joint lead underwriter, and its predecessor Bear Stearns & Co. Inc. served as an underwriter, of the September 21, 2005 Offering, a public offering by WMI, of (i) \$500,000,000 principal amount of Floating Rate Notes due September 17, 2012 (the "Floating Rate Notes") and (ii) \$750,000,000 principal amount of 5.25% notes due September 15, 2017 (together with the Floating Rate Notes, the "September 2005 Offered Securities" and collectively the "September 2005 Offering") pursuant to the terms of an underwriting agreement dated September 21, 2005 (see Exhibit C). Section 7(a) of the underwriting agreement required Washington Mutual, Inc. to indemnify JPMSI and the underwriters of the September 2005 Offering "against any losses, claims, damages or liabilities, joint or several, . . . insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, or any amendment or supplement thereto, or any related preliminary prospectus or preliminary prospectus supplement, or arise out of or are based upon any omission or alleged omission to state therein a material fact required to be

stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred . . .” JPMSI submits this claim on behalf of itself (including as successor to Bear, Stearns & Co. Inc.) and the following underwriters of the September 2005 Offering: Lehman Brothers, Inc., ABN AMRO Incorporated, Barclays Capital Inc., HSBC Securities (USA) Inc. and UBS Securities LLC. This proof of claim is filed to preserve the JPMSI’s and the underwriters’ rights to seek indemnity and/or contribution in connection with the September 2005 Offering. As of the date of the filing of this claim the amount remains unliquidated.

c) JPMSI served as an underwriter of the March 15, 2005 Offering, a public offering by WMI, of (i) \$400,000,000 principal amount of 5.00% Notes due March 22, 2012 (the “5.00% Notes”) and (ii) \$350,000,000 principal amount of Floating Rate Notes due March 22, 2012 (the “March 2012 Floating Rate Notes”) pursuant to the terms of an underwriting agreement dated March 15, 2005 (see Exhibit D) and an underwriter of the March 21, 2005 Offering, a public offering by WMI of \$100,000,000 principal amount of additional Floating Rate Notes due March 22, 2012 (the “Additional March 2012 Floating Rate Notes” and together with the 5.00% Notes and the March 2012 Floating Rate Notes the “the March 15 2005 Offered Securities” and collectively the “March 2005 Offerings”) pursuant to the terms of an underwriting agreement dated March 21, 2005 (see Exhibit E). Section 7(a) of each underwriting agreement required WMI to indemnify JPMSI and the underwriters of the respective March 2005 Offerings “against any losses, claims, damages or liabilities, joint or several, . . . insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, or any amendment or supplement thereto, or any related preliminary prospectus or preliminary prospectus supplement, or arise out of or are based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred . . .” JPMSI submits this claim on behalf of itself and the following underwriters of the March 2005 Offering: Morgan Stanley & Co. Incorporated, Lehman Brothers, Inc., ABN AMRO Incorporated, Bank of America Securities LLC and Credit Suisse First Boston LLC. This proof of claim is filed to preserve the JPMSI’s and the underwriters’ rights to seek indemnity and/or contribution in connection with the March 2005 Offerings. As of the date of the filing of this claim the amount remains unliquidated.

d) JPMSI served as a Purchaser of a May 2007 Offering by Washington Mutual Preferred Funding Trust III (“Trust III”), established by Washington Mutual Preferred Funding LLC, an indirect subsidiary of WMI, as grantor for purposes of the offering of securities by Trust III of \$500,000,000 in principal amount off its Fixed-to-Floating Rate Perpetual Noncumulative Offered Securities (the “May 2007 Offered Securities”) pursuant to the terms of a purchase agreement dated May 21, 2007 (see Exhibit G). Section 9(a) of the Purchase Agreement required Washington Mutual, Inc., *inter alia*, to

indemnify JPMSI and the purchasers of the May 2007 Offering “against any losses, claims, damages or liabilities, joint or several, . . . insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Circular, the Pricing Circular, the Offering Circular, or any amendment or supplement thereto, any Issuer/Seller Supplemental Disclosure Document, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, and will reimburse each Purchaser for any legal or other expenses reasonably incurred by such Purchaser in connection with investigating or defending any such action or claim as such expenses are incurred . . .” This proof of claim is filed to preserve JPMSI’s and the purchasers’ rights as Purchaser to seek indemnity and/or contribution in connection with the May 2007 Offering. As of the date of the filing of this claim the amount remains unliquidated.

e) Bear Stearns & Co. Inc., a predecessor of JPMSI, served as joint lead underwriter, and Banc One Capital Markets, a predecessor of JPMSI, served as an underwriter, of the October 27, 2003 Offering, a public offering of \$1,000,000,000 principal amount of 4.00% Notes due January 15, 2009 by WMI (the “October 27, 2003 Offering”) pursuant to the terms of an underwriting agreement dated October 27, 2003 (see Exhibit H). Section 7(a) of the underwriting agreement required WMI to indemnify Bear Stearns & Co. Inc., Banc One Capital Markets and the underwriters of the October 27, 2003 Offering “against any losses, claims, damages or liabilities, joint or several, . . . insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in either of the Registration Statement, the Prospectus, or any amendment or supplement thereto, or any related preliminary prospectus or preliminary prospectus supplement, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred . . .” JPMSI submits this claim as successor to Bear Stearns & Co. Inc. and Banc One Capital Markets on behalf of such entities and the following underwriters of the October 27, 2003 Offering: Credit Suisse First Boston LLC, Morgan Stanley & Co. Incorporated, ABN AMRO Incorporated, Banc of America Securities LLC, BNY Capital Markets, Inc., Wachovia Securities, Inc. and Keefe, Bruyette & Woods, Inc. This proof of claim is filed to preserve JPMSI’s and the underwriters’ rights to seek indemnity and/or contribution in connection with the October 27, 2003 Offering. As of the date of the filing of this proof claim the amount remains unliquidated.

f) JPMSI served as joint lead underwriter, and its predecessor Bear Stearns & Co. Inc. served as an underwriter, of the November 4, 2004 Offering, an offering by Washington Mutual Bank, FA of (i) \$500,000,000 principal amount of Floating Rate Notes due January 15, 2015 (the “Floating Rate Notes”) and (ii) \$500,000,000 principal amount of 5.125% Subordinated Notes due January 15, 2015 (together with the Floating Rate Notes, the “November 2004 Offered Securities” and collectively the “November 2004 Offering”) pursuant to the terms of a syndicated terms agreement dated November

4, 2004 (see Exhibit I) which incorporated by reference all of the provisions of the Amended and Restated Distribution Agreement dated August 7, 2003 (see Exhibit J) and Accessions to Amended and Restated Distribution Agreement dated November 4, 2004 signed by JPMSI and Bear Stearns & Co. Inc., respectively (see Exhibit K and Exhibit L). Under the terms of each Accession, JPMSI and Bear Stearns & Co. Inc. "may rely upon and shall be entitled to the benefits of the Representations Certificate of Washington Mutual, Inc. dated as of August 7, 2003" (see Exhibit M). By virtue of the Accessions and the Representation Certificate, WMI agreed to indemnify JPMSI, Bear Stearns & Co. Inc. and the other underwriters of the November 2004 Offering "to the same extent and upon the same terms that [Washington Mutual Bank FA agrees] to indemnify and hold harmless each [underwriter] . . . in Section 9(a) of the Distribution Agreement but, . . . only to the extent that [Washington Mutual Bank FA has] not satisfied [its] obligations so to indemnify . . . pursuant to Section 9(a) . . . of the Distribution Agreement." Section 9(a) of the Distribution Agreement required Washington Mutual Bank FA to indemnify each [underwriter]

"(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Offering Circular (including all amendments and supplements thereto and any document incorporated by reference therein) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any government agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, provided that such settlement is effected with the written consent of [Washington Mutual Bank FA]; and

(iii) against any and all expense whatsoever (including the fees and disbursements of counsel chosen by the [underwriter]) reasonably incurred, as incurred, in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above . . ."

JPMSI submits this claim on behalf of itself (including as successor to Bear, Stearns & Co. Inc.) and the following underwriters of the November 2004 Offering: Lehman Brothers, Inc., Morgan Stanley & Co. Incorporated, ABN AMRO Incorporated, Bank of America Securities LLC, BNY Capital Markets, Inc., Wachovia Capital Markets, LLC, Keefe Bruyette & Woods, Inc. and Samuel A. Ramirez & Company, Inc. This proof of claim is filed to preserve JPMSI's and the underwriters' rights to seek indemnity and/or contribution in connection with the November 2004 Offering. As of the date of the filing of this claim the amount remains unliquidated.

In addition to the foregoing, WMI was at the Petition Date, and still is, liable JPMSI in amounts that cannot be precisely determined at this time for certain indemnities and related costs and expenses, as provided by the various agreements between JPMSI and WMI, including without limitation indemnities set forth above.

The following documents are submitted in support of this claim:

- Exhibit A. Underwriting Agreement, dated March 17, 2004.
- Exhibit B. Underwriting Agreement, dated September 21, 2005.
- Exhibit C. Underwriting Agreement, dated March 15, 2005.
- Exhibit D. Underwriting Agreement, dated March 21, 2005.
- Exhibit E. Purchase Agreement, dated May 21, 2007.
- Exhibit F. Underwriting Agreement, dated October 27, 2003.
- Exhibit G. Syndicated Terms Agreement, dated November 4, 2004.
- Exhibit H. Amended and Restated Distribution Agreement, dated August 7, 2003.
- Exhibit I. Accession to Amended and Restated Distribution Agreement, dated November 4, 2004 (JPMSI).
- Exhibit J. Accession to Amended and Restated Distribution Agreement, dated November 4, 2004 (Bear, Stearns & Co. Inc.).
- Exhibit K. Representations Certificate, dated August 7, 2003.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMSI's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMSI from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtor for any claims of third parties that may be asserted against JPMSI.

JPMSI reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMSI that, if known, could have affected this claim or resulted in the assertion of additional

damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtor's possession, or of such quantity that their submission herewith would be administratively impracticable and (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMSI that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMSI. In each such case, JPMSI includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMSI on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtor now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtor has any rights in such property. This claim is submitted to assert and preserve this claim in the Debtor's pending bankruptcy case, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMSI or any other person has waived or intends to waive any rights or claims afforded it under any other agreement with persons other than the Debtor or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

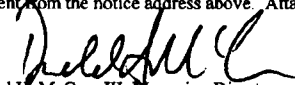
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Proof of Claim 28 Geneva Reboates
with Original



081222909033000000000272

ATTACHMENT A

Vendor Rebates

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Schedule A hereto lists various vendor contracts to which WMI is nominally a party (and WMB is not a party) but JPMCB understands that the services rendered thereunder were for the benefit of and paid for and administered by WMB. In addition, JPMCB understands that WMB managed such contractual relationships. Under such contracts, from time to time, incentives, refunds, rebates, credits, reimbursements or other funds may be due from such vendors under the terms of such contracts.

To the extent that any such funds are paid or otherwise disbursed or credited to WMI instead of JPMCB, as assignee of WMB's assets, JPMCB has a claim against WMI's estate for such amount.

The contracts listed Schedules A are subject to certain confidentiality restrictions binding on JPMCB and therefore are not filed herewith. See below for instructions on how access to or copies of such contracts may be obtained.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to

assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form. **EXCEPT AS FOLLOWS:** If the amount shown is **DISPUTED, UNLIQUIDATED** or **CONTINGENT**, a proof of claim **MUST** be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority: \$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

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6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

Date: March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Visa Incentives

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Visa U.S.A. Inc. ("Visa") and Providian Financial Corporation and its subsidiaries (collectively, "Providian") were parties to the Amended and Restated Strategic Partnership Agreement dated as of February 18, 2004 ("Strategic Partnership Agreement") and as thereafter amended pursuant to which Visa provided funding and support to Providian in return for Providian's issue of Visa-branded cards. On September 26, 2005, the Strategic Partnership Agreement was amended to anticipate the then upcoming merger of Providian and WMI and its affiliates to (i) provide for the parties' respective rights and obligations post-merger, (ii) to add certain terms to the 2004 Agreement to cover Providian's issuance of business cards, and (iii) provide Providian with additional support for its new consumer card accounts and its new business card accounts. In particular, the 2005 amendment provided post-merger for Visa to provide certain supplemental funding, bonus funding, subsidies and monetary and other support

with respect to consumer card accounts, bonus funding for business card accounts, volume growth incentives, marketing support for Providian's Visa-branded payment products, product consulting support, research support, and risk and fraud prevention (individually and collectively, "Account Subsidies"). Account Subsidies accrued for the third quarter of 2008 were at least \$3,250,000 and other incentives calculated pursuant to a "BP Support" formula as set forth in the Strategic Partnership Agreement were at least \$1,354,668.

Although the Strategic Partnership Agreement, as amended, is between Visa and WMI, JPMCB believes that the obligations (i.e., issue Visa-branded cards) and rights thereunder belong to WMB's banking operations, which were transferred to JPMCB. However, if JPMCB is not adjudged to have all right, title and interest under the Strategic Partnership Agreement, or for any reason WMI asserts more than bare legal title to such rights, JPMCB has a claim against WMI's estate for the amount of all accrued and unpaid Account Subsidies and all other damages it may suffer as a result thereof.

The Strategic Partnership Agreement is subject to confidentiality obligations binding on JPMCB and therefore omitted from this proof of claim.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against this Debtor, you do not need to file this proof of claim form. EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

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RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

10 Visa B Shares (non-complaint version)

WMI original



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ATTACHMENT A

Visa Shares

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

WMB was a Washington Mutual member of Visa U.S.A. Inc. WMB conducted the group's Visa payment card business, paid fees to Visa and at all times prior to the Petition date, bore the risk of the Visa payment card business.

The Visa Inc. IPO took place on March 19, 2008 (the "IPO") and created publicly-traded Class A shares, as well as certain classes of restricted shares. In the IPO, all Visa USA members received Class B shares ("B Shares") representing their respective ownership percentages in Visa. Ownership interests, and thus the percentage of shares to be issued to each member by Visa Inc., were calculated based upon certain service fees paid to Visa USA, which fees were paid by WMB.

The Class B Shares are subject to restrictions and are encumbered by contingent liabilities, and are convertible into Class A shares upon the satisfaction of certain conditions and pursuant to a conversion formula all as described in Visa Inc.'s prospectus dated March 18, 2008 (the "Final Prospectus") and certain related transaction documents.

Visa Inc., consistent with what appears to have been a general practice of issuing its stock to the holding company of its issuing bank members, issued the B Shares to the Debtor and not WMB. In the course of the IPO, Visa Inc. redeemed some of the B Shares from its members and paid proceeds to its members. After redemption and payment of proceeds, the Debtor received 3,147,059 B shares. The cash proceeds of the Visa IPO were distributed to WMB.

As stated above, the Visa B Shares are subject to restrictions and are encumbered by contingent liabilities, and are convertible into A Shares upon the satisfaction of certain conditions and pursuant to a conversion formula all as described in Visa Inc.'s Final Prospectus

and certain related transaction documents. Specifically, as part of the IPO and concurrent reorganization, the Visa USA members, whether named defendants or not, agreed to indemnify Visa Inc. with respect to certain litigation described below (the "Covered Litigation"). The description of the indemnity obligation (the "Retrospective Responsibility Plan") with respect to the Covered Litigation may be found in the Final Prospectus, as well as certain transaction documents. The Covered Litigation is defined as and limited to: *Discover Financial Services Inc. v. Visa U.S.A. Inc., et al.* ("Discover"); *American Express Travel Related Services Co. Inc. v. Visa Inc. et al.* ("Amex"); *Attridge v. Visa U.S.A. Inc. et al.* ("Attridge"); and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* ("Interchange") as fully set forth in the Final Prospectus. The scope of the indemnity obligation is limited by the members' respective ownership interests in Visa Inc.

The IPO transaction documents provide that an escrow shall be funded with part of the IPO proceeds and thereafter, as necessary, through further dilution of the B Shares for the purpose of indemnifying Visa Inc. with respect to any judgment in or settlement of Covered Litigation. In addition to dilution of the B Shares, if the B Shares are insufficient to pay all Covered Litigation obligations, then any shortfall is to be paid from the members' own funds in proportion to their respective ownership interests. On the other hand, in the event that the B Shares are not exhausted after the conclusion of all the Covered Litigation, the B Shares may be converted after the lock-up period expires into publicly-traded A Shares.

The Amended and Restated Certificate of Incorporation of Visa Inc. ("Visa Inc. Certificate of Incorporation") provides that the B Shares are "locked up" until the later of: (1) three years from the date of the IPO (3/19/08) or (2) the final judgment or settlement of each of the Covered Litigations.

In order to facilitate the Visa Inc. restructuring in anticipation of the Visa IPO, certain Visa USA members, including the Debtor, executed certain documents including a loss sharing agreement which sets forth the Visa USA members' indemnity obligation with respect to the Covered Litigation, including the obligation to contribute to any shortfall. With respect to the Covered Litigation, the Debtor and WMB (as successor to Providian) are named defendants in the Interchange litigation and were named defendants in the Amcx litigation. Neither entity was a named defendant in the Discover litigation, and neither is named in the Attridge litigation.

Amex was settled in November 2007. As reported in the 2007 Form 10-K, WMB was "obligated to indemnify Visa, Inc. for ... certain Visa litigation. ...The Bank recognized a charge of \$38 million for its share of the [Amex] settlement in the third quarter of 2007." The 10-K further states that in conjunction with the Visa restructuring, changes were made to certain by-laws and as a result, the "changes represent a modification of the indemnification obligations and resulted in the recognition of a guarantee liability ... related to the proportionate share of its obligation to indemnify Visa for certain litigation."

While the Debtor remains the registered holder of the B Shares issued in the IPO, it holds only bare legal title. The ownership interest in Visa Inc. represented by the B Shares was awarded based upon fees paid by WMB (including its predecessors). WMB undertook reporting with respect to the Covered Litigation and received the proceeds of the IPO. On the basis of these facts, the B Shares received in connection with the IPO are properly the property of WMB

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Your Claim Is Scheduled as Follows:

~~Proof of Claim~~ 18 Wages Paid to WMI Employee
WMI Original

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

Amount entitled to priority:

\$ See Attachment A

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

KURTZMAN CARSON CONSULTANTS

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000297

ATTACHMENT A

Wages Paid to Employees

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Prior to the Petition Date, WMI did not have the payroll system to pay its own employees and pay related tax withholdings and state worker's compensation insurance. These functions were performed by WMB on behalf of WMI. Following the Petition Date, until WMI had its own payroll system in place, WMI was unable to make such payments and requested that JPMCB, as transferee of WMB's assets, to do so on its behalf with respect to employees of WMI and WaMu 1031 Exchange. On various dates following the Petition Date, JPMCB made the following payments with respect to such employees which have not been reimbursed by WMI:

- | | | |
|----|---|--------------|
| 1. | salary/wages and tax withholdings accrued
prior to the Petition Date | \$481,845.73 |
|----|---|--------------|

2.	payments to participants in WMI's nonqualified deferred compensation plans for September 2008	\$9,624.69
3.	worker's compensation insurance for the third quarter of 2008 paid to the State of Washington	\$658.02
4.	salary/wages and tax withholdings accrued following the Petition Date	\$107,452.60

JPMCB has a claim against WMI's estate for the reimbursement of \$599,581.04, representing the sum of the above amounts, which represent administrative expenses of WMI's estate.

The following documents are submitted in support of these claims:

- Exhibit A. E-mail dated October 31, 2008 from John Maciel of Alvarez & Marsal, on behalf of WMI, to certain employees of JPMCB.
- Exhibit B. Invoice Payment Ledger showing \$599,581.04 due.
- Exhibit C. Employer's Quarterly Report for Industrial Insurance (Worker's Compensation) for the quarter ended September 30, 2008 filed with the Department of Labor and Industries of the State of Washington.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as a priority claim to the extent allowable and entitled to priority under section 507(a)(4) of the Bankruptcy Code for the amounts due to employees from the Debtors and assigned to JPMCB upon payment thereof by JPMCB.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek

relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)
Filed on: _____

Your Claim is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.
If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ See Attachment A

2. Basis for Claim: See Attachment A.
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

07 WaMu Pension (non-complaint)
WMI original

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000273

ATTACHMENT A

WaMu Pension Plan

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

WMI is the sponsor of the WaMu Pension Plan ("Plan"), a tax qualified cash balance pension plan. The Plan provides benefits to the employees and former employees of WMI and its affiliated companies, as well as the former employees of WMB, including those currently employed by JPMCB. The assets and liabilities of the Plan were reflected in the financial statements of WMI as of the Petition Date.

Because the vast majority of participants in the Plan prior to the Petition Date were employed by WMB and its subsidiaries, substantially all pension expense for the Plan was allocated to WMB and its subsidiaries via a monthly allocation. For 2007, that allocation was \$45,450,413 of \$45,921,605. Of the \$45,450,413, \$19,880,812 was cash settled with WMI. The remainder, \$25,569,601, reduced a prepaid expense established on the books and records of WMB, representing the excess of historic contributions over expense allocations. For 2008, the expense allocated to WMB was \$16,743,165 of \$17,043,165.

As of the Petition Date, WMB's books and records showed an asset consisting of a prepaid expense of \$273,616,108 representing Plan contributions in excess of expense allocations (and contributions of entities merged into WMB). The books and records of WMI showed an intercompany liability of the same amount owed to WMB. Monthly consolidation adjustments treated the prepaid expense as an intercompany receivable that was eliminated in consolidation against the intercompany payable on WMI's books.

The prepaid expense resulted from the transfer of contributions in excess of expense allocations reflected on WMB's books and records as of January 1, 2007 to the books and records of WMI as of January 1, 2007 to implement Statement of Financial Accounting Standards 158 and to properly recognize WMB's participation in the Plan.

Rather than settling the referenced obligation through a cash payment from WMI to WMB, the parties established this prepaid pension expense, which was in substance an intercompany receivable on WMB's books and records. The books and records of WMI recorded a corresponding intercompany liability of the same amount owed to WMB. The prepaid expense was established at \$315,928,874 as of January 1, 2007 and was subsequently reduced by a portion of the 2007 expense allocation and all of the 2008 expense allocation through September 25, 2008. Since ceasing operations, WMI has not made any payment associated with its intercompany liability. As of the Petition Date, the intercompany asset was valued at \$273,616,108 on WMB's books and records. Under the P&A, JPMCB purchased, among other things, this intercompany receivable relating to the Plan, which WMI has not paid. This proof of claim is filed, in part, in respect of such non-payment.

Should WMI terminate the Plan and receive distribution of assets in excess of liabilities, then JPMCB is entitled to any such excess assets to the extent of at least the unpaid amount of the intercompany receivable. Section 12.2 of the Plan states that upon termination, the excess assets "shall be returned to the Employer, subject to applicable law." Section 2.21 of the Plan defines "Employer" as WMI, WMB and a number of other subsidiaries of WMI, and to the extent paid by WMB, any "return" thereof can only be to JPMCB as transferee of WMB's rights. This proof of claim is also filed, in part, in respect of the rights of JPMCB as purchaser of the assets of WMB, including the intercompany receivable, to a return of such excess assets up to at least the amount of the intercompany receivable asset.

If WMI terminates the Plan resulting in a Distress Termination (i.e. assets are less than liabilities) as described in Section 1341a of the Employee Retirement Income Security Act, and should any entity or person thereafter seek to recover from JPMCB such underfunding and any other amounts attributable to such underfunding or to the Distress Termination (including but not limited to claims for benefits, fiduciary breach, penalties, taxes and attorney fees), then JPMCB will accrue an indemnification, contribution or reimbursement claim recoverable from WMI, the amount of which cannot be determined as of this date, and this proof of claim is also submitted in respect thereof.

A class action captioned *Buus v. WaMu Pension Plan*, No. C07-0903 MJP (W.D. Wash.) ("*Buus*") is also currently pending in respect of the Plan. Whether or not JPMCB assumes the Plan, if it is thereafter named (i) as a defendant in *Buus* or any other current or future similar or related lawsuits or (ii) as an adverse party in any governmental agency proceedings relating to the Plan, and in each case, including but not limited to claims for benefits, fiduciary breach, penalties, taxes and attorney fees, associated with WMI's control and management of the Plan, or the liabilities of the Plan are increased as a result of *Buus* or any other pending or future litigation relating to the Plan, JPMCB would be entitled to indemnification, contribution or reimbursement by WMI, the amount of which cannot be determined as of this date.

JPMCB also asserts a claim for indemnity and/or contribution in the amount of the decline in value of the assets in the Plan from and after the Petition Date resulting from WMI's inattention and failure to properly administer the Plan assets, and a claim for unjust enrichment for the amount of JPMCB's contributions made to the Plan in the event JPMCB does not assume the Plan.

The following documents are submitted in support of these claims:

- Exhibit A: WaMu Pension Plan, as last amended as of December 27, 2005.
- Exhibit B: Screenshots of receivable on WMB's books.
- Exhibit C: Amended Complaint in *Buus v. WaMu Pension Plan*.

This proof of claim is submitted as a priority claim to the extent allowable and entitled to priority under section 507(a)(5) of the Bankruptcy Code for the amounts due to any employee benefit plan from the Debtors and assigned to JPMCB upon contributions made thereto by JPMCB.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

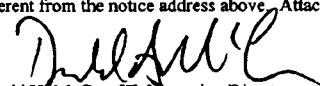
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date: March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Artwork

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Schedule B, item 5 of the Second Amended Schedule of Assets and Liabilities for WMI filed by WMI with the Bankruptcy Court on February 24, 2009 identifies "Artwork" with a "[n]et book value of \$24,866.00". An accompanying footnote states that "[p]rior to the appointment of the FDIC as receiver for WMB on September 25, 2008, WMI, WMB, and certain other direct and indirect subsidiaries of WMI owned approximately 2,500 pieces of artwork, of which only one was listed on WMI's balance sheet as of September 26, 2008. WMI reserves all rights to assert an ownership interest with respect to each of the other pieces of artwork."

JPMCB has confirmed that a number of artworks are presently located on the premises of JPMCB (as they were formerly WMB premises). JPMCB has been unable to determine from books and records reviewed to date the extent to which these artworks were

actually acquired by, paid for, or booked as owned by WMB. To the extent that WMB paid for the acquisition of such artworks, or has otherwise identified such artworks as assets of WMB on its books and records, JPMCB is entitled to retain them free and clear of any reservation of interests of WMI or others asserting claims thereto through WMI. This proof of claim is submitted to reserve any and all claims that JPMCB, as transferee of WMB's assets, has to works of art shown on WMB's books and records (or that should have been so shown) as assets of WMB.

This claim, together with certain of the other claims of JPMCB or any of its subsidiaries or affiliates that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFV)

WMI Investment Corp. 08-12228 (MFV)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

Amount entitled to priority:

\$ See Attachment A

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

11 Assets Acquired (non-complaint new)
WMI original



ATTACHMENT A

Assets Acquired

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Schedule A below lists software license agreements and Schedule B below lists hardware/software agreements, all of which relate to software licenses, hardware and software assets (collectively, the "Assets") that were utilized extensively, if not exclusively, by WMB for its banking operations prior to the Petition Date. These Assets have been claimed by WMI or one or more of its non-bank subsidiaries despite JPMCB's belief that some or all of the Assets were assets of WMB at the time JPMCB acquired WMB's assets from the Receiver.

JPMCB's understanding of its ownership of the Assets, which is based upon the best information currently available to JPMCB, in each case is premised upon one or more of the following factors: (i) a history of payments, including prepayments, to the licensors/vendors under these agreements having been routinely made by WMB, not WMI, out of what appear to have been WMB accounts rather than any WMI accounts, (ii) the Assets being reflected in the official books and records of WMB as assets of WMB, (iii) payments relating to the Assets having been recorded in WMB's profit and loss statements, (iv) with respect to the purchase of larger assets, recordation on the balance sheet of WMB as assets of WMB which have been depreciated or amortized over time, and (v) the agreements comprising the Assets were entered into primarily for the use and benefit of WMB.

For these reasons, JPMCB believes the Assets are assets of JPMCB as transferee of WMB's assets under the P&A Agreement. However, if JPMCB is not adjudged to have all right, title and interest to such Assets, JPMCB has a claim against WMI's bankruptcy estate for all damages it may suffer from the loss of any of such Assets and any amounts paid by JPMCB following the Petition Date under or relating to the agreements.

The agreements listed in Schedule A include single transaction agreements and master agreements which set forth general terms and conditions of the agreement and schedules or statements of work thereto which describe the licenses, hardware and software acquired.

The contracts listed in Schedule A and Schedule B in support of this claim are subject to confidentiality restrictions binding on JPMCB and therefore are not submitted with this proof of claim.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

The claims asserted herein are to the best of JPMCB's reasonable belief based upon information and documentation available and after investigation of the facts, including, without limitation, the information contained in Schedule A and Schedule B. If further investigation or the recovery of relevant contract documentation reveals that the claims should be amended, either to supplement or reduce the number of claims, this proof of claim will be amended accordingly.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting

from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below, however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority: \$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

20 BKK Landfill
WMI original

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



08122290933000000000268

ATTACHMENT A

BKK Landfill

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

This claim is made against WMI for contribution as a potentially responsible party for cleanup of a former hazardous waste disposal facility in West Covina, California. In 1959, Home Savings and Loan Association ("Home") purchased property in West Covina, California. Home subsequently secured permits for a landfill on a portion of the property and in 1964 leased a portion of the property to BKK Corporation ("BKK"), which established and operated a waste landfill and later a hazardous waste landfill ("BKK Landfill"). In 1973, Home transferred the property subject to the lease to Oxford Investment Corporation, its subsidiary ("Oxford"). In 1976, BKK exercised an option in its lease to acquire the property from Oxford. In 1995, Home transferred the stock of Oxford to Home's parent, H.F. Ahmanson & Company. In 1998, Home merged into WMB and H.F. Ahmanson & Company merged into WMI. Between 1998 and the Petition Date, Oxford, which changed its name to Ahmanson

Developments, Inc., merged into another WMI subsidiary named WMI Rainer LLC. Since that time, WMI Rainer LLC has been a subsidiary of WMI.

BKK operated a non-hazardous waste disposal facility from 1964 until approximately 1972 when the site was permitted to accept Class I hazardous waste. BKK then operated a hazardous waste landfill on the property from approximately 1972 until 1984. From 1984 until today, the landfill has been in regulatory "closure" and "post-closure".

BKK ran out of resources to meet its closure and post-closure responsibilities, so control of the site was turned over to the California Department of Toxic Substances Control ("DTSC") in late 2004. In response to DTSC orders, a joint defense group consisting of several parties potentially responsible for the cleanup of the BKK Landfill (each, a "PRP" and, collectively, the "Group") was formed in 2005 and entered into a Joint Defense, Privilege and Confidentiality Agreement, dated as of February 28, 2005 (the "Joint Defense Agreement"), which is subject to confidentiality obligations. WMB and WMI, among others, are members of the Group. Any ultimately-assessed liability may be advanced against the Group members as jointly and severally liable parties.

To the extent JPMCB is determined to have succeeded to the liabilities of WMB as a member of the Group, it has an indemnification or contribution claim against WMI for WMI's contributory share of any such cleanup costs.

The following documents are submitted in support of this claim:

- Exhibit A. Amended Consent Decree, dated March 6, 2006.
- Exhibit B. Imminent and Substantial Endangerment Determination and Order and Remedial Action Order, dated December 2, 2004.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet-unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald A. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

09 BOLI/COLI (non-complaint)
WMI original



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ATTACHMENT A

BOLI/COLI

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Bank Owned Life Insurance policies ("BOLI") are types of life insurance policies purchased by WMB (or a predecessor company) on the lives of employees. Under these types of plans, WMB paid premiums for the insurance and was also the primary beneficiary of the policies. In the case of a split dollar policy, the insurance proceeds are split by both WMB (or a predecessor company) and the insured employee's designated beneficiary.

JPMCB has demonstrated to Debtors that it owns a substantial number of BOLI policy list bills. However, there are two BOLI policy list bills issued by Pacific Life, with list bill numbers 7675A and 7729A, which the Debtors and JPMCB have not reached agreement as to ownership. These BOLI policies appear on WMB's books and records as assets of WMB. WMB's accounting records do not show a dividend of these policies to WMI or a purchase of these policies by WMI.

The Debtors also have not acknowledged in writing that JPMCB owns ING Security Life List Bills E208090000 and E208090001 and approximately 955 Split Dollar policies issued by a number of carriers. The ING Security Life policies were reflected on the books and records of a predecessor bank, American Savings Bank, F.A., that merged into WMB. WMI has no legal, record, equitable or beneficial interest in any of these policies.

The 955 Split Dollar policies were recorded on the books of WMB as of the date of the P&A Agreement. These policies initially belonged to Commercial Capital Bancorp Inc. when it merged into WMB in April 2006 and were reflected on its books as of the date of the merger. Correspondence with the insurance carriers for these Split Dollar policies confirms that WMB was the owner of these policies as of September 25, 2008.

This Proof of Claim is submitted with respect to any secured or unsecured claims of JPMCB against the Debtors in the event JPMCB is determined not to have acquired full right, title and interest in the Pacific Life BOLI policies referenced above in the Split Dollar policies or in any other BOLI policies reflected on WMB's books as an asset.

JPMCB also asserts a claim for unjust enrichment for the value of each policy, as applicable, in the event that JPMCB is not found to be the owner of such policy.

The following documents are submitted in support of these claims:

- Exhibit A. Letters evidencing Grantor status of WMB in BOLI trusts.
- Exhibit B. American Savings Bank, F.A., Executive Compensation Program's Life Insurance Plan.
- Exhibit C. WMB Certificate of Assistant Secretary, dated May 9, 2008.
- Exhibit D. Email, dated March 27, 2009, confirming ING Security Life BOLI policies were recorded on WMB books as of September 25, 2008.
- Exhibit E. Letters from insurance carriers establishing ownership of Split Life Policies.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmaturing or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that

prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Your Claim Is Scheduled as Follows:

34 Court Bond Indemnity Claim
1 WMI original
1

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000282

ATTACHMENT A

Bond Indemnity

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

While JPMCB, fully and without limitation or reservation, reserves any and all substantive and procedural rights, remedies and recourse to disclaim, challenge or defend against any such assertion, it could be asserted that pursuant to the P&A Agreement, JPMCB assumed (i) certain liabilities with respect to which Safeco Insurance Company ("Safeco") or other insurance or bonding companies (collectively, with Safeco, the "Bonding Companies") issued bonds on behalf of one or more of the Affiliated Banks or their affiliates (collectively, the "Bonds"), or with respect to possible obligations of one or more of the Affiliated Banks or their affiliates, whether or not such obligations are contingent, unliquidated or disputed (collectively, the "Bonded Obligations"), and/or (ii) indemnity obligations to the Bonding Companies under, or on account of, one or more written contracts. JPMCB reserves all right, title and interest in, to and under the Bonds, if any, to the extent provided in the P&A Agreement.

Based upon the documentation now available to JPMCB, JPMCB believes that over 2000 Bonds with an aggregate bonded exposure of over \$216 million had been issued by the Bonding Companies on behalf of the Affiliated Banks and were outstanding as of the Petition Date. Thirty-two of the Bonds, in an aggregate bonded exposure of almost \$3 million, were for or on account of court bonding obligations incurred on various dates in 2007 and 2008, which were referenced in Schedule 3.5 to the P&A Agreement as being acquired by JPMCB "for retained litigation risk". Six of the Bonds, in an aggregate bonded exposure of over \$5 million were for or on account of guaranty/payment obligations. Approximately 50 of the Bonds, in an aggregate bonded exposure of over \$1 million were for or on account of license and permit obligations. Over 2000 of the Bonds, in an aggregate bonded exposure of over \$207 million were for or on account of missing instruments. Three Bonds, in an aggregate bonded exposure of \$30,000 were for or on account of notary public requirements. Five Bonds, in the aggregate bonded exposure of over \$300,000 were for or on account of subdivision bonding requirements. Finally, one Bond in the amount of \$220,000, was issued to or for the benefit of the State of California.

A Schedule, reflecting the basic terms of the known and outstanding Bonds, is attached hereto as Exhibit B (note, however, that this claim is filed with respect to all Bonds and Bonded Obligations, whether or not they are referenced in the attached Schedule).

Further this claim is filed with respect to previously cancelled Bonds, and related Bonded Obligations, with respect to which claims or demands may be made upon JPMCB on account of claims that had arisen against the Affiliated Banks or their affiliates prior to cancellation of the respective Bonds, without regard to the timing of the asserted claim. Safeco has advised JPMCB that there are possibly in excess of 3000 such Bonds, for which WMI would have liability under one or more contracts of indemnity. For the purposes of this claim, "Bonds" shall include all open and outstanding Bonds, and all previously cancelled Bonds, for which a WMI contract of indemnity may apply.

Most, if not all, of the Bonds were issued by Safeco under a General Agreement of Indemnity with WMI dated as of June 14, 1999 (the "Indemnity") a copy of which is attached hereto. Under the Indemnity, WMI agreed "to pay to [Safeco] upon demand all loss and expense, including reasonable attorney fees incurred by [Safeco] by reason of having executed any Bond". The Chapter 11 filing of WMI and its possible inability to fulfill its indemnity obligations under the Indemnity puts JPMCB at risk for possible loss of the Bonds and the attendant expense of replacing the Bonds, as required under the various court proceedings and underlying obligations. Further JPMCB may be required to defend claims brought against it due to the loss or reduction of one or more Bonds.

JPMCB makes this protective, contingent and unliquidated claim for any amounts JPMCB may be compelled to expend to replace the Bonds, or to defend itself as a consequence of terminated or reduced Bonds in an amount that is undetermined at this time.

The following documents are submitted in support of this claim:

- Exhibit A. General Agreement of Indemnity dated as of June 19, 1999 between Safeco and WMI.

- Exhibit B. A Schedule of known Bonds as of the Petition Date (the "Schedule").

The documents listed below also support this claim but are not submitted with this filing because they are a matter of public record, are not in the possession of JPMCB, are voluminous and/or already in the possession of the Debtor:

- all underlying documentation evidencing the Bonded Obligations listed on the Schedule;
- all surety bond documents evidencing the Bonded Obligations listed on the Schedule; and
- additional documentation supporting the Safeco bonds and Bonding Companies' bonding programs.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of

any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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MAR 30 2009

KURTZWAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

21 Casmalia Landfill
WMI original

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



08122909033000000000283

ATTACHMENT A

Casmalia Landfill

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMB fsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

This claim is made against WMI for contribution as a potentially responsible party for the cleanup of the Casmalia Disposal Site located in Santa Barbara County, California. On or around June 7, 2007, the United States Environmental Protection Agency (the "EPA") and the State of California notified both WMB and WMI that they may be potentially responsible parties in connection with the cleanup of the Casmalia Disposal Site. WMB subsequently entered into a De Minimis settlement with both the EPA and the State of California. In August 2007, WMB paid the sum of \$26,124.00 to the EPA and was awaiting determination of the amount to be paid to the State of California.

As a result of the decision of the United States Supreme Court in United States v. Atlantic Research Corp., 127 S. Ct. 2331 (2007), both the EPA and the State of California, in

December 2008, determined it was necessary to re-solicit WMB's execution of the De Minimis settlement. JPMCB did not take any action with respect to this request.

As currently there is no effective settlement, both WMB and WMI remain potentially responsible parties for the cleanup of the Casmalia Disposal Site. To the extent WMB is found to have liability, if JPMCB is determined to have succeeded to the liabilities of WMB with respect to this matter, it has an indemnification or contribution claim against WMI for WMI's contributory share as a potentially responsible party.

The following document is submitted in support of this claim:

- Exhibit A. Letter, dated June 7, 2007, from the EPA to WMB.
- Exhibit B. Letter, dated June 15, 2007, from DTSC to WMB.
- Exhibit C. Letter of Consent and Authorization for Agreement, dated August 10, 2007, from WMB to California Department of Justice.
- Exhibit D. Letter of Acceptance of a De Minimis Settlement Offer, dated September 7, 2007, from WMB to EPA.
- Exhibit E. Letter Notice of Changes to Settlement, dated December 5, 2008, from the EPA to WMB.
- Exhibit F. Proposed De Minimis Consent Decree.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of

JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form. **EXCEPT AS FOLLOWS:** If the amount shown is **DISPUTED, UNLIQUIDATED** or **CONTINGENT**, a proof of claim **MUST** be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Community Investments (Atlanta)

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Pursuant to a Note dated March 15, 2006 and a Loan Agreement dated March 15, 2006, WMB through its business line Community Investments funded an unsecured loan in the amount of \$500,000.00 (the "Loan") to Atlanta Mutual Housing Association, a Section 501(c)(3) nonprofit corporation, as borrower ("Borrower").

The Loan proceeds are to be exclusively used by the Borrower to provide foreclosure prevention and financial assistance to WMB residential borrowers who are in default and unable to make payments on their residential mortgage loans and who meet certain eligibility requirements. The Loan is subordinated and unsecured and an interest rate of 2% per annum. Interest payments are made quarterly. The current principal balance on the Loan is \$500,000.00 and the maturity date is March 14, 2013.

The proceeds of the Loan were funded by WMB and the Loan is treated as a mortgage asset of WMB. However, the loan documents are in the name of WMI, which JPMCB believes holds only bare legal title. JPMCB was informed that WMB structured the Loan so that legal title would rest in the name of WMI for public relations purposes, as the underlying borrowers receiving assistance funded by the Loan are borrowers of WMB. JPMCB understands that the Borrower's program was not fully implemented and a likelihood exists that upon request the Borrower will prepay the Loan.

JPMCB believes that legal title to the Loan should be transferred from WMI to JPMCB. If for any reason legal title to the Loan is not transferred to JPMCB, or for any other reason WMI asserts more than bare legal title to the Loan, or for any reason WMI receives any payment with respect to the principal, interest or any other amount with respect to the Loan, JPMCB has a claim against WMI's estate for any amount that may be received by WMI with respect to the Loan.

The following documents are submitted in support of this claim:

- Exhibit A. Note, dated March 15, 2006, between the Borrower and WMI.
- Exhibit B. Loan Agreement, dated March 15, 2006, between the Borrower and WMI.
- Exhibit C. Corporate Resolution, dated December 23, 2005, by the Board of Directors of the Borrower.
- Exhibit D. Wire Transfer Request, dated April 21, 2006.
- Exhibit E. Wire Transfer Approvals, dated April 21, 2006.

This claim, together with certain of the other claims of JPMCB or any of its subsidiaries or affiliates that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullicrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

Amount entitled to priority:

\$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

RECEIVED

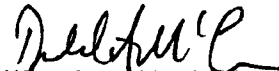
MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Community Investments (Tampa)

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Pursuant to a Note dated December 21, 2007 and a Loan Agreement dated December 21, 2007, WMB through its business line Community Investments funded an unsecured loan in the amount of \$500,000.00 (the "Loan") to Tampa Bay Community Development Corporation, a Section 501(c)(3) nonprofit corporation, as borrower ("Borrower").

The Loan proceeds are to be exclusively used by the Borrower to provide foreclosure prevention and financial assistance to WMB residential borrowers who are in default and unable to make payments on their residential mortgage loans and who meet certain eligibility requirements. The Loan is subordinated and unsecured and the interest rate ranges from 0% to 2% per annum. Interest payments are made quarterly. The current principal balance on the Loan is \$1,000,000.00 and the maturity date is December 21, 2014.

The proceeds of the Loan were funded by WMB and the Loan is treated as a mortgage asset of WMB. However, the loan documents are in the name of WMI, which JPMCB believes holds only bare legal title. JPMCB was informed that WMB structured the Loan so that legal title would rest in the name of WMI for public relations purposes, as the underlying borrowers receiving assistance funded by the Loan are borrowers of WMB. JPMCB understands that the Borrower's program was not fully implemented and a likelihood exists that upon request the Borrower will prepay the Loan.

JPMCB believes that legal title to the Loan should be transferred from WMI to JPMCB. If for any reason legal title to the Loan is not transferred to JPMCB, or for any other reason WMI asserts more than bare legal title to the Loan, or for any reason WMI receives any payment with respect to the principal, interest or any other amount with respect to the Loan, JPMCB has a claim against WMI's estate for any amount that may be received by WMI with respect to the Loan.

The following documents are submitted in support of this claim:

- Exhibit A. Note, dated December 21, 2007, between the Borrower and WMI.
- Exhibit B. Loan Agreement, dated December 21, 2007, between the Borrower and WMI.
- Exhibit C. Corporate Resolution, dated November 21, 2007, by the Board of Directors of the Borrower.
- Exhibit D. Funds Transfer Request and Authorization, dated December 27, 2007.
- Exhibit E. New Loan Journal, dated December 27, 2007.

This claim, together with certain of the other claims of JPMCB or any of its subsidiaries or affiliates that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
 c/o Hyde R. Feldstein
 Sullivan & Cromwell LLP
 1888 Century Park East
 Los Angeles, California 90067-1725
 310.712.6600
 feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
 c/o Kevin G. Mruk
 10 South Dearborn, Mail Code IL1-0080
 Chicago, Illinois 60603-2003
 312.732.7105
 kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
 (If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
 c/o Joseph A. Giampapa
 1111 Polaris Parkway, 4P0265
 Columbus, Ohio 43271-0152
 614.248.6056
 joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form. **EXCEPT AS FOLLOWS:** If the amount shown is **DISPUTED, UNLIQUIDATED** or **CONTINGENT**, a proof of claim **MUST** be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as: _____

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED


MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


 Donald H. McCree III, Managing Director
 JPMorgan Chase Bank, National Association
 270 N. Park Ave., Floor 46
 New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Community Investments (Community Housing Works)

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Pursuant to a Second Amended and Restated Note dated May 1, 2007 and a Loan Agreement dated December 18, 2006, WMB through its business line Community Investments funded an unsecured loan in the amount of \$1,000,000.00 (the "Loan") to Community Housing Works, a Section 501(c)(3) nonprofit corporation, as borrower ("Borrower").

The Loan proceeds are to be exclusively used by the Borrower to provide foreclosure prevention and financial assistance to WMB residential borrowers who are in default and unable to make payments on their residential mortgage loans and who meet certain eligibility requirements. The Loan is subordinated and unsecured and the interest rate ranges from 0% to 2% per annum. Interest payments are made quarterly. The current principal balance on the Loan is \$1,000,000.00 and the maturity date is December 18, 2013.

The proceeds of the Loan were funded by WMB and the Loan is treated as a mortgage asset of WMB. However, the loan documents are in the name of WMI, which JPMCB believes holds only bare legal title. JPMCB was informed that WMB structured the Loan so that legal title would rest in the name of WMI for public relations purposes, as the underlying borrowers receiving assistance funded by the Loan are borrowers of WMB. JPMCB understands that the Borrower's program was not fully implemented and a likelihood exists that upon request the Borrower will prepay the Loan.

JPMCB believes that legal title to the Loan should be transferred from WMI to JPMCB. If for any reason legal title to the Loan is not transferred to JPMCB, or for any other reason WMI asserts more than bare legal title to the Loan, or for any reason WMI receives any payment with respect to the principal, interest or any other amount with respect to the Loan, JPMCB has a claim against WMI's estate for any amount that may be received by WMI with respect to the Loan.

The following documents are submitted in support of this claim:

- Exhibit A. Second Amended and Restated Note, dated May 1, 2007, between the Borrower and WMI.
- Exhibit B. Loan Agreement, dated December 18, 2006, between the Borrower and WMI.
- Exhibit C. Corporate Resolution, dated December 16, 2006, by the Board of Directors of the Borrower.
- Exhibit D. Funds Transfer Request and Authorization, dated April 5, 2007; Wire Transfer Request and Approval, dated April 5, 2007; and Draw Request Form, dated April 4, 2007.

This claim, together with certain of the other claims of JPMCB or any of its subsidiaries or affiliates that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek

relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

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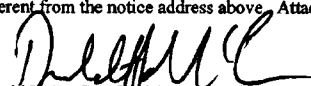
MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald M. McCree, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

12 Software Contracts
WMI original



08122290903300000000291

ATTACHMENT A

Developed Software

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Schedule A hereto lists application development services agreements where the software applications arising out of the services are in use as of the date of this proof of claim and Schedule B below lists application development services agreements where the software applications arising out of the services are not in use as of the date of this proof of claim. The agreements listed in Schedule A and Schedule B provide for assets, including software applications developed by vendors under the terms of such agreements (the "Software Assets"), that were utilized extensively, if not exclusively, by WMB for its banking operations prior to the Petition Date. JPMCB believes that some or all of the Software Assets were assets of WMB at the time JPMCB acquired WMB's assets from the Receiver based on the following: (i) payments to the vendors under these contracts were routinely made by WMB, not WMI, out of what appear to be WMB accounts rather than any WMI accounts, (ii) the Software Assets are reflected in the official books and records of WMB as assets of WMB, (iii) payments in connection to the Software Assets have been recorded in WMB's profit and loss statement, and (iv) those Software Assets which reflect larger development projects were also recorded on the balance sheet of WMB as assets of WMB and depreciated or amortized over time.

JPMCB believes the Software Assets paid for by WMB should be assets of JPMCB as transferee of WMB's assets. If JPMCB is not adjudged to have all right, title and interest to such Software Assets, or for any reason WMI asserts more than bare legal title to such Software Assets, JPMCB has a claim against WMI's estate for all damages it may suffer from the loss of such Software Assets. The value of the Software Assets developed under the contracts listed on Schedule A is estimated to be up to \$2,700,000. The value of the Software Assets developed under the contracts listed on Schedule B is currently undetermined. The value of the Software Assets is calculated as the cost to redevelop a software application having substantially similar form, features and functionality (without infringing on the intellectual property rights of WMI as the owner (if WMI is determined to be the owner) of the originally

developed Software Asset), with reference to (i) the amounts paid to the vendor in connection with the particular software development project and for related services otherwise provided by the vendor, (ii) estimated resources and time required to design, develop, test and implement the replacement software application, and (iii) with respect to Software Assets now in use, the estimated impact on JPMCB if JPMCB were required to substantially immediately cease using the software application.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or

statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

All of the contracts listed in Schedule A and Schedule B are subject to confidentiality restrictions binding on JPMCB and are therefore omitted from this proof of claim. Please see below for instructions on how to gain access to or obtain copies of such contracts.

The information in Schedule A and Schedule B is to JPMCB's belief after significant investigation. If further investigation reveals that the developed application is actually licensed software (e.g., the relevant contract document indicates that the vendor owns the application, or the services believed to be development services were actually only implementation and support with respect to a licensed application), an additional entry in another category of claim may be appropriate. If further investigation reveals that WMI actually paid for the application and was not reimbursed by WMB, that entry will be removed.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

Amount entitled to priority:

\$ See Attachment A

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Proof of Claim 25 Electronic Discovery and
Data Storage
Original



08122290903300000000295

ATTACHMENT A

Electronic Discovery and Data Services

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Prior to the Petition Date, OnSite Sourcing Inc. ("OSS") had performed certain electronic discovery services for WMB and its subsidiaries and its parent WMI pursuant to a Master Services Agreement (the "MSA") and Statement of Work #1 (the "SOW"), both dated as of December 5, 2007, between OSS and WMB. Pursuant to the P&A Agreement, JPMCB elected to affirm WMB's contract with OSS. Following the Petition Date, OSS has continued to perform such services for JPMCB and WMI.

As part of the assumption of the contract, JPMCB paid OSS in early January 2009 all of the outstanding invoices under the contract, including invoices for work OSS performed for or on WMI's behalf for the months of September, October and November 2008. Pursuant to a letter agreement entered into in January 2009 between WMI and JPMCB (the "January

Letter”), WMI agreed to reimburse, and subsequently paid, JPMCB an amount equal to \$655,148.67, reflecting WMI’s share of the OSS invoices for work performed in October and November 2008. However, WMI has not reimbursed JPMCB for an amount equal to \$464,368.82, reflecting WMI’s share of the OSS invoices for work performed in September 2008.

The January Letter also contemplates that WMI needed continued access to OSS’s services in the ordinary course of its business and that the parties’ course of performance with respect to the payment of the OSS invoices would continue in the future. Subsequently, JPMCB submitted for reimbursement, and WMI paid, an amount equal to \$192,792.95, reflecting WMI’s share of the OSS invoices for work performed in December 2008.

Based on the January Letter and the parties’ course of performance related to OSS, JPMCB expects WMI to continue to reimburse JPMCB for WMI’s share of OSS’s monthly invoices until WMI is no longer relying on or using any of OSS’s services. Invoices for work performed by OSS for the months of January and February have been received and submitted to WMI in the ordinary course. An invoice for March 2009 has not been received. JPMCB estimates that costs for March and future months will be just under \$200,000 per month.

In the event WMI fails or refuses to reimburse JPMCB for WMI’s share of OSS’s monthly invoices for as long as WMI continues to rely on or use any of OSS’s services, then JPMCB has an administrative claim in an amount to be determined at the time of WMI’s failure or refusal to pay. In addition, JPMCB has a claim against WMI for \$464,368.82, reflecting WMI’s share of the OSS invoices for work performed in September 2008 previously paid by JPMCB to OSS.

The following documents are submitted in support of this claim:

- Exhibit A. Master Services Agreement, dated as of December 5, 2007, between OSS and WMB.
- Exhibit B. Statement of Work #1, dated as of December 5, 2007, between OSS and WMB.
- Exhibit C. Invoice number ED0247705M dated September 30, 2008 of OSS.
- Exhibit D. Letter Agreement entered into in January 2009 between WMI and JPMCB.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent

specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal &

Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other—Specify applicable paragraph of 11 U.S.C. § 507(a) 2.

Amount entitled to priority:

See Attachment A

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

16 Consolidated Employee Benefits Plan Claim
WMI original

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



ATTACHMENT A

Employee Benefits

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Schedule A hereto lists certain self-funded employee benefit plans adopted prior to the Petition Date that were sponsored by WMI for the benefit of, among others, employees or former employees of WMB and its subsidiaries (collectively, the "Plans"). Following the Petition Date, WMI has not taken any steps to terminate such Plans and was unable to make certain payments under the Plans with respect to obligations to such employees attributable to periods prior to and after the Petition Date, as well as certain payments due to third party vendors providing administrative services for certain Plans attributable to services rendered prior to the Petition Date. Because JPMCB desired to preserve the goodwill of such employees, who became employees of JPMCB as transferee of WMB's assets, JPMCB (i) made the payments specified in Schedule A under "Amounts Already Paid After Petition Date" on various dates following the Petition Date, (ii) is scheduled to make the payments specified in Schedule A

under "Amounts Scheduled to be Paid After Petition Date" and (iii) may determine in the future from time to time to make additional payments, in each case under or in connection with the applicable Plan. JPMCB has one or more claims against WMI's estate with respect to:

1. reimbursement, indemnification and/or contribution from WMI for any and all payments made by JPMCB following the Petition Date under any Plan attributable to the period prior to the Petition Date as set forth in Schedule A under "Amounts Paid After Petition Date" in the amounts listed thereunder;
2. reimbursement, indemnification and/or contribution from WMI for any and all payments scheduled to be made by JPMCB following the Petition Date under any Plan attributable to the period prior to the Petition Date as set forth in Schedule A under "Amounts Scheduled to be Paid After Petition Date" in the amounts listed thereunder;
3. reimbursement, indemnification and/or contribution from WMI for any payment, cost or liability that may be incurred by JPMCB following the Petition Date under any Plan attributable to the period prior to the Petition Date, in an aggregate amount that cannot be determined at the present time, except that with respect to potential liabilities under the WaMu Medical Plan, JPMCB has obtained an analysis prepared by Towers Perrin that estimates the amount of incurred but unpaid liabilities as of September 30, 2008 thereunder to be \$30,432,805; and
4. with respect to the WaMu Medical Plan, reimbursement, indemnification and/or contribution from WMI for any rebate or refund payment received by WMI from carriers or other providers to the WaMu Medical Plan to the extent attributable to amounts paid by JPMCB to maintain medical coverage for former employees of WMB, in an amount that cannot be determined at the present time.

In addition, JPMCB entered into assignment agreements with employees who were participants under the DCP and the SERP (both as defined in Schedule A) pursuant to which such participants assigned to JPMCB their claims against WMI with respect to the amounts owed to them pursuant to such Plans. To the extent JPMCB's claim against WMI's estate described in paragraphs 1 and 2 above are disallowed, JPMCB also asserts a claim against WMI's estate as subrogee and assignee of such participants.

The following documents are submitted in support of these claims:

- Exhibit A. List of Payments to Participants Under DCP and SERP.
- Exhibit B. Form of Assignment Agreement between JPMCB and Employees.
- Exhibit C. Incurred But Not Paid Reserve Analysis for the Self-Funded Medical, Prescription Drug, Dental and Vision Plans 4th Quarter 2008, dated December 2008, prepared by Towers Perrin.
- Exhibit D. Invoice U2354920 from ExcellerateHRO.

- Exhibit E. Invoice dated October 7, 2008 from UnitedHealthcare.
- Exhibit F. Invoices from Sedgwick.

Copies of the Plans listed in Schedule A are voluminous and are therefore omitted from this filing.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as a priority claim to the extent allowable and entitled to priority under section 507(a)(4) of the Bankruptcy Code for the amounts due to employees from the Debtors and assigned to JPMCB upon payment thereof by JPMCB.

This proof of claim is submitted as a priority claim to the extent allowable and entitled to priority under section 507(a)(5) of the Bankruptcy Code for the amounts due to any employee benefit plan from the Debtors and assigned to JPMCB upon contributions made thereto by JPMCB.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims

for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hyde R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Your Claim Is Scheduled as Follows:

40 Indemnity for General Bad Acts
WMI original

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, AP0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.


7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000266

ATTACHMENT A

General Indemnity

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

In addition to the assets identified in specific proofs of claim filed concurrently herewith, JPMCB continues to review the intercompany relationships, transactions and liabilities of the Debtors and their former subsidiaries. JPMCB's current understanding of its ownership of the assets acquired and liabilities assumed under the P&A Agreement is based on a diligent search for relevant information made available to JPMCB and is reflected in the specific proofs of claim filed. JPMCB files this proof of claim to preserve its claims and those of its subsidiaries or affiliates with respect to the assets acquired and liabilities assumed under the P&A Agreement, any investigation and/or litigation matters filed, threatened or future, as well as for indemnification, contribution, reimbursement and unjust enrichment related to any asset or liability transfers made by, on behalf of, to, or for the benefit of WMB or any of its subsidiaries.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional

damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullerom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Your Claim Is Scheduled as Follows:

36 IAA Administrative Claim
 WMI original
 Fi

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

Amount entitled to priority:

\$ See Attachment A

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MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033000000000311

ATTACHMENT A

Information Access Agreement

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

By order dated December 16, 2008, the Bankruptcy Court authorized and approved the Information Access Agreement, dated November 21, 2008 (the "Information Access Agreement"), between WMI and certain of its affiliates and JPMCB, pursuant to which JPMCB agreed to provide WMI certain access to information as provided therein. Section 5(a) of the Information Access Agreement provides that WMI and its affiliates shall promptly reimburse JPMCB for all reasonable costs and expenses actually incurred in providing the information and access described therein. To the extent WMI or its affiliates fail to pay amounts owing under the Information Access Agreement when due, JPMCB has a post-petition administrative claim against WMI for such amounts.

The following document is submitted in support of this claim:

- Exhibit A. Information Access Agreement, dated November 21, 2008, between WMI and certain of its affiliates and JPMCB.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their

submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)

Filed on: March 30, 2009

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

Amount entitled to priority:

See Attachment A

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MAR 31 2009

KURTZMAN CARSON CONSULTANTS

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

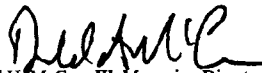
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 31, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



081222909033100000000105

ATTACHMENT A

Insurance (Amended and Restated)

This Attachment A amends, restates and supersedes in its entirety the Attachment A captioned "Insurance" attached to the proof of claim filed by JPMorgan Chase Bank on March 30, 2009.

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Schedule A hereto lists certain insurance policies that JPMCB has to date identified as being issued prior to the Petition Date and with respect to which WMI is identified as the "first named insured" and WMB and its subsidiaries are identified as "additional named insureds" (collectively, the "Policies"). JPMCB believes that WMB has previously paid or otherwise remains liable for all or some portion of the premiums for the Policies (other than certain of the Executive and Organization Policies listed on Schedule A for which WMI paid the

premiums). Therefore, JPMCB, as assignee of WMB, is submitting this proof of claim against WMI for:

1. reimbursement, indemnification and/or contribution from WMI for any payment, cost or liability incurred by WMB prior to September 25, 2008 with respect to or attributable to any claim made by WMI or any of its subsidiaries (other than WMB and its subsidiaries) under any Policy prior to September 25, 2008, in an amount that cannot be determined at the present time;
2. reimbursement, indemnification and/or contribution from WMI for any payment, cost or liability incurred by JPMCB as assignee of WMB assets under or relating to any Policy, including payments to the insurer of an applicable Policy, from and after September 25, 2008, in an aggregate amount that cannot be determined at the present time;
3. all payments received by WMI under Policies in respect of pending claims to which WMB or any of its subsidiaries was or would be entitled, whether such pending claims are listed in the Debtors' Schedule of Assets and Liabilities or Statement of Financial Affairs or otherwise, in whole or in part, but which have been or will be paid to WMI, in an amount up to the policy limit for such Policy (pending claims of which JPMCB is aware are listed in Schedule A under "Pending Claims");
4. all payments in the future received by WMI under Policies in respect of any future claims made under any such Policy to which JPMCB, as transferee of WMB's assets, would be entitled, in whole or in part, but which are paid to WMI, in an amount that cannot be determined at the present time;
5. return of any prepaid or overpaid premiums under any Policy paid by WMB in the event such premiums have been or are hereafter paid to WMI by either the applicable insurer or by an insurance broker that may hold the funds, in an aggregate amount equal to at least the amounts listed under "Premiums to be Returned" in Schedule A with respect to prepaid or overpayments premiums known at the date hereof and in an amount that cannot be determined at the present time with respect to other possible unknown prepayments or overpayments;
6. return of any funds or other collateral deposited by WMB in escrow or to secure liability obligations thereunder with any insurer or other entity for which funds or other collateral are deposited under the applicable Policy or surety bond in the event such funds or collateral have been or are hereafter paid to WMI, in an aggregate amount equal to at least the amounts listed under "Collateral to be Returned" in Schedule A with respect to escrowed amounts known at the date hereof and in an amount that cannot be determined at the present time with respect to other possible unknown escrowed amounts;

7. any and all damages arising out of or relating to WMI's interference with JPMCB's rights to coverage under the Policies; and
8. any and all damages arising out of or attributable to the exhaustion of any limits under the Policies with claims of WMI and its subsidiaries (other than WMB and its subsidiaries) to the exclusion of JPMCB's claims.

The following documents are submitted in support of these claims:

- Exhibit A. D&O Invoice No. 351998, dated May 5, 2008, of Marsh USA, Inc.
- Exhibit B. Screenshot of Payment of Invoice No. 351998.
- Exhibit C. Screenshot of General Ledger Validation of Marsh Invoice No. 351998.
- Exhibit D. InfoPoint Visual Access Account Detail Page, prepared March 27, 2009, showing Prepaid Insurance Amortization.
- Exhibit E. InfoPoint Visual Access Account Detail Page, prepared March 27, 2009, showing October 2008 Prepaid Insurance Reconciliations.
- Exhibit F. September 2008 Prepaid Insurance Schedule.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).

Amount entitled to priority:

See Attachment A

FOR COURT USE ONLY

RECEIVED


MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

Insurance

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. JPMCB believes that its claims are against WMI, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB has filed its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

Schedule A hereto lists certain insurance policies that JPMCB has to date identified as being issued prior to the Petition Date and with respect to which WMI is identified as the "first named insured" and WMB and its subsidiaries are identified as "additional named insureds" (collectively, the "Policies"). JPMCB believes that WMB has previously paid or otherwise remains liable for all or some portion of the premiums for the Policies (other than the Executive and Organization Policies listed on Schedule A for which WMI paid the premiums). Therefore, JPMCB, as assignee of WMB, is submitting this proof of claim against WMI for:

1. reimbursement, indemnification and/or contribution from WMI for any payment, cost or liability incurred by WMB prior to September 25, 2008 with respect to or attributable to any claim made by WMI or any of its subsidiaries (other than

WMB and its subsidiaries) under any Policy prior to September 25, 2008, in an amount that cannot be determined at the present time;

2. reimbursement, indemnification and/or contribution from WMI for any payment, cost or liability incurred by JPMCB as assignee of WMB assets under or relating to any Policy, including payments to the insurer of an applicable Policy, from and after September 25, 2008, in an aggregate amount that cannot be determined at the present time;
3. all payments received by WMI under Policies in respect of pending claims to which WMB or any of its subsidiaries was or would be entitled, whether such pending claims are listed in the Debtors' Schedule of Assets and Liabilities or Statement of Financial Affairs or otherwise, in whole or in part, but which have been or will be paid to WMI, in an amount up to the policy limit for such Policy (pending claims of which JPMCB is aware are listed in Schedule A under "Pending Claims");
4. all payments in the future received by WMI under Policies in respect of any future claims made under any such Policy to which JPMCB, as transferee of WMB's assets, would be entitled, in whole or in part, but which are paid to WMI, in an amount that cannot be determined at the present time;
5. return of any prepaid or overpaid premiums under any Policy paid by WMB in the event such premiums have been or are hereafter paid to WMI by either the applicable insurer or by an insurance broker that may hold the funds, in an aggregate amount equal to at least the amounts listed under "Premiums to be Returned" in Schedule A with respect to prepaid or overpayments premiums known at the date hereof and in an amount that cannot be determined at the present time with respect to other possible unknown prepayments or overpayments;
6. return of any funds or other collateral deposited by WMB in escrow or to secure liability obligations thereunder with any insurer or other entity for which funds or other collateral are deposited under the applicable Policy or surety bond in the event such funds or collateral have been or are hereafter paid to WMI, in an aggregate amount equal to at least the amounts listed under "Collateral to be Returned" in Schedule A with respect to escrowed amounts known at the date hereof and in an amount that cannot be determined at the present time with respect to other possible unknown escrowed amounts;
7. any and all damages arising out of or relating to WMI's interference with JPMCB's rights to coverage under the Policies; and
8. any and all damages arising out of or attributable to the exhaustion of any limits under the Policies with claims of WMI and its subsidiaries (other than WMB and its subsidiaries) to the exclusion of JPMCB's claims.

The following documents are submitted in support of these claims:

- Exhibit A. D&O Invoice No. 351998, dated May 5, 2008, of Marsh USA, Inc.
- Exhibit B. Screenshot of Payment of Invoice No. 351998.
- Exhibit C. Screenshot of General Ledger Validation of Marsh Invoice No. 351998.
- Exhibit D. InfoPoint Visual Access Account Detail Page, prepared March 27, 2009, showing Prepaid Insurance Amortization.
- Exhibit E. InfoPoint Visual Access Account Detail Page, prepared March 27, 2009, showing October 2008 Prepaid Insurance Reconciliations.
- Exhibit F. September 2008 Prepaid Insurance Schedule.

This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

This proof of claim is submitted as entitled to priority as an administrative expense under sections 503(b) and 507(a)(2) of the Bankruptcy Code for any amounts paid by JPMCB on account of post-Petition Date obligations of the Debtors.

JPMCB hereby reserves all of its rights and remedies against the Debtors, including with respect to the District Court Action and the Adversary Proceeding and to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullerom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).
- Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority: \$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

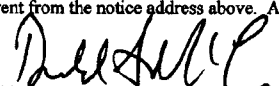
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

FOR COURT USE ONLY

RECEIVED

MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

14 Intangible Assets
WMI original



081222909033000000000270

ATTACHMENT A

Intangible Assets

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

WMI reported on its Quarterly Report on Form 10-Q (the "10-Q") as filed with the Securities and Exchange Commission, \$13,779,000,000 in intangible assets on its consolidated balance sheet as of June 30, 2008, including \$7,284,000,000 of goodwill, \$6,175,000,000 of mortgage servicing rights and \$320,000,000 of identifiable intangible assets. The Thrift Financial Report ("TFR") for WMB, as filed with the Office of Thrift Supervision, reported as of June 30, 2008 \$13,779,471,000 in intangible assets, including \$7,604,409,000 in goodwill and \$6,175,062,000 in mortgage servicing assets. The \$471,000 difference between the total intangible assets reported by WMI and WMB is merely a function of rounding; the 10-Q is reported in millions while the TFR is reported in thousands. Thus, all of the intangible assets, including intellectual property such as domain names, trademark rights and patent rights, reported by WMI belong to WMB as no intangible assets are recorded at the holding company level. This proof of claim is submitted in respect to any right to payment with respect to any intangible asset, however described, held, recorded or reported, owing to WMB to the fullest extent such amounts are due to WMB as assigned by the Receiver to JPMCB on the general ledger of WMI (and without duplication of other intangible assets owed by the Debtor with respect to claims allowed under other proofs of claim filed in this Bankruptcy Court) including any right to reimbursement, contribution, indemnity or in respect of constructive trust or any unjust enrichment.

The following supporting documents are submitted as support of this claim:

- Exhibit A. Excerpt from WMI's Form 10-Q for the period ended June 30, 2008.
- Exhibit B. Excerpt from WMB's Thrift Financial Report for the period ended June 30, 2008.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(if known)
Filed on: _____

Your Claim Is Scheduled as Follows:

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: \$ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as:

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: See Attachment A.

Value of Property: \$ See Attachment A. Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: \$ See Attachment A. Amount of Unsecured: \$ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

\$ _____

FOR COURT USE ONLY

RECEIVED

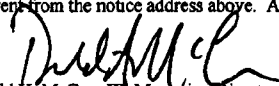
MAR 30 2009

KURTZMAN CARSON CONSULTANTS

Date:

March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.


Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



ATTACHMENT A

WMI Investment Corp.

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb") and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

JPMCB hereby incorporates by reference the specific proofs of claim filed concurrently herewith by JPMCB or its subsidiaries or affiliates against WMI as provided in Schedule A attached hereto and any additional proofs of claim that may be filed by JPMCB, as assignee of WMB's assets, or JPMCB's subsidiaries or affiliates against WMI, including (i) the factual basis and nature of each claim; (ii) any amounts claimed; (iii) any remedies or reservation of rights asserted; (iv) any supporting documents referenced therein, including any documents or Schedules attached thereto; (v) any claim for priority status under sections 503(b) or 507(a) or otherwise; and (vi) any assertion of a secured claim under section 506(a) or other applicable law.

JPMCB continues to review the intercompany relationships, transactions and liabilities of the Debtors and their former subsidiaries. JPMCB's current understanding of its ownership of the assets acquired and liabilities assumed under the P&A Agreement is based on a diligent search for relevant information made available to JPMCB and is reflected in the specific proofs of claim incorporated by reference herein. JPMCB files this proof of claim to preserve its claims and those of its subsidiaries or affiliates against WMI Investment with respect to the assets acquired and liabilities assumed under the P&A Agreement.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----	x	
<i>In re</i>	:	
	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	
	:	Case No. 08-12229 (MFW)
Debtors.	:	
	:	Jointly Administered
-----	x	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
	:	Adversary Proceeding No. _____
Plaintiffs,	:	
	:	
v.	:	
	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Defendant.	:	
-----	x	

COMPLAINT FOR TURNOVER OF ESTATE PROPERTY

Plaintiffs Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and with WMI, "Plaintiffs" or "Debtors"), through their undersigned counsel, bring this turnover action against defendant JPMorgan Chase Bank, National Association ("JPMC"), and, in support thereof, respectfully allege as follows:

¹ The Debtors in these chapter 11 cases (the "Chapter 11 Cases") and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

NATURE OF ACTION

1. These Chapter 11 Cases have been pending for more than seven months. Incredibly, the Debtors have been proceeding without one of the most significant (and most liquid) assets of their estates – over \$4 billion in cash placed on deposit in demand deposit accounts with their former bank subsidiaries Washington Mutual Bank, Henderson, Nevada ("WMB") and Washington Mutual Bank fsb, Park City, Utah ("WMB fsb," and together with WMB, the "Banks"). Now, the Debtors are prepared to move forward with developing a chapter 11 plan, but any such plan requires release and utilization of the Debtors' substantial cash assets currently being wrongfully withheld by JPMC.

2. On September 25, 2008, JPMC purportedly purchased substantially all of WMB's assets (including the stock in WMB fsb) in exchange for payment of \$1.88 billion and the assumption of all of WMB's deposit liabilities, including those deposit liabilities owed to the Debtors (the "P&A Transaction"). Shortly thereafter, JPMC assumed all of WMB fsb's deposit liabilities by merging WMB fsb with its own banking operations.

3. The cornerstone of the agreement by which JPMC acquired the assets was that all Bank depositors would have immediate and ready access to their cash on deposit at JPMC. Accordingly, that certain aptly titled Purchase and Assumption Agreement Whole Bank, dated September 25, 2008 (the "P&A Agreement"), is clear with respect to JPMC's assumption of substantially all of WMB's liabilities, including, particularly, WMB's deposit liabilities. Thus, the second recital of the P&A Agreement, found on the first page of the agreement specifically provides that JPMC "desires to purchase

substantially all of the assets and *assume all deposit and substantially all other liabilities*" of WMB. (Emphasis added.)

4. Although the P&A Transaction significantly depleted the Debtors' assets (given the valuable assets delivered in exchange for underpriced consideration paid), and spurred the filing of the Chapter 11 Cases, the Debtors believed, like all other depositors of the Banks, that the P&A Transaction did not and could not operate to strip them of their more than \$4 billion in cash deposits. Moreover, although they were faced with filing the Chapter 11 Cases, the Debtors contemplated that they would have access to their deposits which would serve as a source of creditor recoveries.

5. Despite the Debtors' unquestionable right to their deposits, JPMC has refused to turn them over to the Debtors. There can be no serious dispute that these funds, now on deposit with JPMC, are demand deposits and property of the Debtors' estates. The funds were specifically intended to be held in demand deposit accounts for the Debtors' benefit. However, notwithstanding the lack of ambiguity in the P&A Agreement and in all parties' understanding of the P&A Transaction itself, JPMC has refused to pay them to the Debtors. By seeking to retain over \$4 billion in deposits, JPMC is positioning itself to receive an enormous windfall of unprecedented dollar amounts over and beyond the significant profits it has already realized as a result of its fire-sale purchase of the Debtors' banking assets – a transaction which contributed significantly to JPMC's first quarter 2009 "record firmwide revenue."

6. That JPMC claims it "purchased" in excess of \$4 billion in cash deposits and that such cash deposits have somehow come to represent equity in WMB or WMB

fsb is both absurd, and not surprisingly, finds no support in the P&A Agreement or the undisputed facts, which clearly demonstrate that the funds represent deposit liabilities.

7. Because JPMC cannot seriously contest the nature of the funds on deposit, JPMC has suggested it has a right of set-off as a basis to continue to withhold the funds. However, any purported right of setoff against the deposits is meaningless without a valid claim to offset. Similarly, JPMC also has asserted that it holds a security interest in certain of the deposits; however, any purported security interest is of no legal significance in the absence of an obligation owed JPMC to be secured. Recognizing this, JPMC has asserted illegitimate claims to manufacture grounds to retain the funds and to justify the prejudice it is causing the Debtors' estates by failing to pay them what it owes and has wrongfully withheld. Whatever else may be said for these claims however, under any circumstances, any such claims do not belong to JPMC because under the express and unambiguous terms of the P&A Agreement, JPMC did not acquire any claims against the Debtors from the Banks.

8. Moreover, even if the P&A Agreement is interpreted to transfer claims held by the Banks to JPMC (which it does not), any such claims would have been transferred on the literal eve of the Chapter 11 Cases. The Bankruptcy Code expressly prohibits any claims acquired in the 90-day period immediately preceding the commencement of the Debtors' Chapter 11 Cases from being utilized to setoff amounts owed the Debtors where they were insolvent or rendered insolvent at the time of the transfer. The Bankruptcy Code similarly prohibits the use of any claims acquired post-petition, without regard to the Debtors' solvency, to setoff amounts owed the Debtors. Therefore, JPMC has absolutely no setoff basis to withhold the Debtors' cash deposits,

because assuming JPMC acquired claims against the Debtors pursuant to the P&A Transaction or thereafter, the Debtors were either insolvent at the time of, or rendered insolvent by, the P&A Transaction. Moreover, to the extent any claims were acquired from WMB fsb post-petition, JPMC has absolutely no basis to setoff such claims against the Debtors' cash deposits, irrespective of the Debtors' solvency.

9. JPMC has no basis to withhold the Debtors' funds and the funds are accruing interest at a rate significantly less than what the Debtors' estates would otherwise be earning. Yet, based upon JPMC's average return on interest-earning assets, by retaining the Debtors' deposits, JPMC could earn as much as \$200 million per year. As a result, this Complaint seeks turnover of the more than \$4 billion in Debtor funds on deposit with JPMC in demand deposit accounts that are property of the Debtors' estates and restitution in connection with JPMC's unjust enrichment.

JURISDICTION AND VENUE

10. This is an action pursuant to Federal Rule of Bankruptcy Procedure 7001 and 11 U.S.C. §§ 541 and 542.

11. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b).

12. Venue is proper in this Court under 28 U.S.C. § 1409(b).

13. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E).

THE PARTIES

14. Plaintiff WMI is a corporation organized under the laws of the State of Washington with its principal place of business located at 1301 Second Avenue, Seattle, Washington 98101.

15. Plaintiff WMI Investment is a corporation organized under the laws of the State of Delaware with its principal place of business located at 1301 Second Avenue, Seattle, Washington 98101.

16. On September 26, 2008 (the "Petition Date"), WMI and WMI Investment filed petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). The Plaintiffs are debtors in the jointly-administered Chapter 11 Cases and are operating as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

17. Defendant JPMC is a national banking association organized under the laws of the United States with its principal place of business in Columbus, Ohio. JPMC is a wholly-owned subsidiary of JPMorgan Chase & Co., a corporation organized under the laws of Delaware.

FACTUAL BACKGROUND

A. THE DEBTORS' DEMAND DEPOSIT ACCOUNTS

18. On September 25, 2008, the Debtors had cash on deposit with the Banks in excess of \$3.8 billion, consisting of more than \$135 million in demand deposit accounts at WMB ("WMB Accounts," with the funds therein defined as the "WMB Deposits") and approximately \$3.668 billion in a demand deposit account at WMB fsb (the "WMB fsb Account," with the funds therein defined as the "WMB fsb Deposits," and with the WMB Accounts and the WMB Deposits, respectively, the "Accounts" and the "Deposits").

19. The following chart illustrates the Accounts and Deposits therein as of September 30, 2008:

<u>Debtor</u>	<u>Bank</u>	<u>Last Four Digits of Account No.</u>	<u>Deposit as of September 30, 2008</u>
WMI	WMB fsb	4234 ("Account 4234")	\$3,667,943,172
WMI	WMB	1206 ("Account 1206")	\$52,600,201
WMI	WMB	0667 ("Account 0667")	\$264,068,186
WMI	WMB	9626	\$4,650
WMI	WMB	9663	\$747,799
WMI Investment	WMB	4704 ("Account 4704")	\$53,145,275

Copies of the September 2008 "Washington Mutual Internal Checking Detail Information" forms which reflect monthly balance and transactions for the Accounts, addressed to WMI or WMI Investment (the "Account Statements"), are attached hereto as Exhibit A.

20. Just prior to the Petition Date, WMI's Account with the largest balance was Account 4234. Approximately \$3.67 billion of WMI's deposits were held in Account 4234, making such Deposits one of the most significant non-contingent assets of the Debtors' estates.

21. Account 4704 is owned by WMI Investment; the remainder of the Accounts are owned by WMI. The Accounts were listed on the Debtors' Schedules of Assets and Liabilities filed with this Court [Docket No. 475 and 619].

22. Each of the Accounts was established and maintained in accordance with internal policies and procedures of WMI and its subsidiaries governing "On-Us," or intra-corporate, deposit accounts. Per WMI's "GL Administration Policy," a document used to

"communicate policies for the establishment and usage of 'On-Us' bank accounts for all Washington Mutual entities and departments," On-Us accounts are internal "corporately owned Demand Deposit Account accounts." A copy of the GL Administration Policy is attached hereto as Exhibit B.

23. JPMC continues to issue Account Statements to the Debtors, notably with the following disclosure: "Deposit accounts now held by JPMorgan Chase Bank., N.A." A copy of the March 2009 Account Statements are attached hereto as Exhibit C. Upon information and belief, subsequent to the P&A Transaction, JPMC has reported the Deposits as deposit liabilities to the Office of the Comptroller of the Currency and has paid federal deposit insurance premiums on the Deposits, as it does for all of its deposit liabilities and as the Banks themselves did prior to the P&A Transaction.

24. Each of the Accounts was accounted for in the books and records of WMB or WMB fsb, as the case may be, as a demand deposit account and a deposit liability owing to either WMI or WMI Investment, as appropriate. Demand deposit accounts, in contrast to term deposit accounts, are accounts from which deposited funds can be withdrawn at any time without any notice to the depository institution.

B. WMI MOVES PRIMARY CHECKING ACCOUNT TO WMB FSB

25. Account 0667, a WMB Account, had served as WMI's long-time primary checking account at WMB. From this account, WMI serviced its outstanding debt, paid dividends on its preferred and common equity, and disbursed payments on account of tax obligations and myriad other operating expenses. Account 0667 was WMI's primary non-interest bearing checking account and, therefore, was very active and typically had approximately 10 to 15 transactions per day.

26. On or about September 18, 2008, WMI determined that it would transfer its primary checking account from its direct wholly-owned subsidiary, WMB, to its indirect wholly-owned subsidiary, WMB fsb. The end result was that the deposit liability owed to WMI became a deposit liability of WMB fsb.

27. As is customary with any transfer to a newly-established deposit account, this transfer was to be effectuated by submitting a "New Account Request Form" utilized to open a new demand deposit account at either Bank and completing a "Journal Entry Posting Form," accounting for the transfer of Deposits from Account 0667 to a new account at WMB fsb. Although the New Account Request Form (the "First Initial Account Request Form") properly indicated that the account was to be opened at WMB fsb, an administrative processing error caused a new account to be first opened at WMB (Account No. xxx-xxx421-8, "Account 4218"). Thus, \$3.674 billion in Deposits may have initially been transferred to Account 4218 at WMB.

28. On September 22, 2008, a revised New Account Request Form (the "Revised Account Request Form") was created and the mistake was corrected, retroactively to September 19, 2009, with the creation of Account 4234 at WMB fsb. Thus, as initially intended, \$3.674 billion in Deposits was properly transferred to Account 4234, a WMB fsb Account. Account 4218 was closed while Account 0667 remained a WMB Account. The September 2008 Account Statement for Account 0667 reflects an opening balance of \$4.541 billion and shows four debits on September 19, 2009 in an aggregate amount of \$3.674 billion. The September 2008 Account Statement for Account 4234 at WMB fsb shows four corresponding credits (deposits), effective September 19, 2009, in an aggregate amount of \$3.674 billion.

29. The transfer of WMI's Deposits from WMB to WMB fsb did not change the nature of the Deposits as compared to when they were included in Account 0667. Both the Initial and Revised Account Request Forms and the supporting Journal Entry Posting Forms indicate that each of short-lived Account 4218 and new Account 4234 was intended to be a demand deposit account for the benefit of WMI. The transfer simply moved the Deposits from one Bank to the other.

30. In both instances, the Initial and Revised Account Request Forms prepared to establish Account 4218 and Account 4234, respectively, denoted expressly that the new account was to be an "On-Us" corporate checking account to be assigned a product code of "B3." Copies of the Initial and Revised Account Request Forms are attached hereto as Exhibit D. The GL Administration Policy provides that "B3's are non-interest bearing DDA accounts," and makes clear that "DDA" is an abbreviation that signals a Demand Deposit Account. The GL Administration Policy likewise provides that "On-Us" accounts are "Demand Deposit Accounts."

31. Moreover, the Journal Entry Posting Forms used to account for the transfer of funds from Account 4218 to Account 4234 denote that Account 4234 was to be a "DDA" account. The September 2008 Account Statement for Account 4234, evincing the transfer of Deposits, properly reflects such amounts as "Customer Deposits."

32. New Account Request Forms may be used to open several different account types (*e.g.*, loss drafts, commercial loans, insurance drafts, investors/custodial accounts, "on us" accounts, and public funds). However, in each instance the forms are used to create a deposit account. Thus, it is clear that the Accounts are deposits subject to turnover in this proceeding.

C. JPMC'S ACQUISITION OF WMB AND ASSUMPTION OF THE DEPOSIT LIABILITIES

33. On September 25, 2008, substantially all the assets of WMB, including the stock of its subsidiary WMB fsb, were purportedly sold to JPMC for the purchase price of \$1.88 billion, pursuant to the P&A Agreement (publicly available at <http://www.fdic.gov/about/freedom/popular.html>). Additionally, JPMC expressly assumed all deposit liabilities and substantially all other liabilities of WMB. (P&A Agreement § 2.1). All depositors were ensured a "seamless transition" and that they were to be "fully protected." (Federal Deposit Insurance Corporation, Press Release, *JPMorgan Chase Acquires Banking Operations of Washington Mutual*, Sept. 25, 2008).

34. Under section 2.1 of the P&A Agreement, JPMC "expressly assumes . . . and agrees to pay, perform, and discharge, all of the liabilities of [WMB] . . . including the Assumed Deposits" (P&A Agreement § 2.1). "Assumed Deposits" is defined to mean "Deposits" which is defined to include the WMB Deposits, subject only to two inapplicable exceptions. (P&A Agreement § 2.1).

35. Further, under section 5.1 of the P&A Agreement, JPMC agreed to "pay all properly drawn checks, drafts and withdrawal orders of [WMB] depositors . . . to the extent that the Deposit balances to the credit of the respective makers or drawers . . . are sufficient to permit payment thereof" (P&A Agreement § 5.1).

36. Thus, the P&A Agreement is clear that JPMC unambiguously assumed liability under the P&A Agreement for the WMB Deposits in each of the WMB Accounts.

37. Under the P&A Agreement, WMB fsb became the wholly-owned subsidiary of JPMC when JPMC acquired the equity interests of WMB fsb. (P&A

Agreement § 3.1). Pursuant to the subsequent merger of JPMC and WMB fsb, JPMC assumed all deposit liabilities of WMB fsb, including with respect to WMI as depositor of the WMB fsb Account (*i.e.*, Account 4234).

38. The P&A Transaction was extremely profitable for JPMC. In 2008, JPMC realized a \$1.9 billion after-tax extraordinary gain from "merger-related items" in connection with the P&A Transaction. *See* JPMorgan Chase & Co., Form 10-K for the fiscal year ended December 31, 2008, at 26. The actual windfall to JPMC was even greater, including an immediate effect on JPMC's revenues. Having acquired the Banks at fire-sale prices, JPMC has achieved "record firmwide revenue" in first quarter 2009 and has enjoyed growth in retail banking deposits by 62% and in checking accounts by 126%.² JPMC is now seeking to increase its windfall by \$4 billion.

D. THE ACCOUNT STIPULATION

39. On October 14, 2008, the Debtors entered into a stipulation with JPMC (the "Account Stipulation"), pursuant to which JPMC agreed with the Debtors that the Accounts (in addition to various other deposit accounts held by WMB by certain of WMI's non-Debtor subsidiaries),³ were deposit accounts of the Debtors. A copy of the

² *See* JPMC Press Release, *JPMorgan Chase Reports First-Quarter 2009 Net Income of \$2.1 Billion, or \$0.40 per Share*, April 16, 2009. Specifically, net income in JPMC's Retail Financial Services division "was \$474 million, compared with a net loss of \$311 million in the prior year" due, in part, to the "positive impact of the Washington Mutual transaction" Net income in JPMC's Commercial Banking division "was \$338 million, an increase of \$46 million, or 16%, from the prior year, driven by higher net revenue reflecting the impact of the Washington Mutual transaction" "Net interest income [at JPMorgan Chase] was \$15.5 billion, up by \$6.1 billion, or 65%, due to the impact of the Washington Mutual transaction," among other things.

³ There are twenty-nine deposit accounts which were the subject of the Account Stipulation, including the six Accounts. The last four digits of each deposit

Account Stipulation is attached hereto as Exhibit E. The Account Stipulation was based upon the fact that the Deposits were property of the Debtors' estates. The Debtors contemplated that the Deposits – one of the largest of their estates' assets – were to be the cornerstone of a successful chapter 11 plan and would be used to fund distributions to creditors.

40. Upon receipt of this Court's approval of the Account Stipulation, JPMC had agreed to transfer the Deposits "as the Debtors, in their sole and absolute discretion, may direct," with the exception of Account 1206 which was the subject of an Account Security Agreement, dated as of May 31, 2002 in favor of WMB (the "Security Agreement"). The Account Stipulation provided further that the Deposits were to remain subject to claims, rights and remedies that JPMC may have had, and afforded JPMC replacement liens to the extent of any such interests, but did not expressly enumerate or provide the basis for any such claims. The Account Stipulation further contemplated that the Deposits were to be used to pay administrative expenses of the Chapter 11 Cases and to make distributions to the Debtors' creditors pursuant to a chapter 11 plan.

41. On January 26, 2009, the Debtors were forced to withdraw their motion seeking the Court's approval of the Account Stipulation when JPMC would not agree to a form of order approving the Account Stipulation. Since then, the Deposits have

account number are: 1206, 0844, 4234, 2184, 3525, 0667, 9626, 9663, 8359, 7731, 7187, 3411, 6282, 3429, 3487, 3495, 6290, 6307, 3445, 3461, 3479, 7719, 6323, 3672, 7873, 9697, 4704, 5081, and 5099. Of the twenty-three accounts that are owned by non-Debtor WMI subsidiaries, seventeen have been moved to other financial institutions, two have been closed, and four remain at JPMC.

continued to remain in JPMC's possession, enriching JPMC unjustly while accruing interest for the benefit of the Debtors' estates at a less than market rate.⁴

E. JPMC HAS REFUSED TO TURN OVER THE ACCOUNTS

42. JPMC has no ownership interest in the Deposits. As discussed herein, the Deposits are matured debts owed, and payable on demand, to the Debtors that JPMC assumed pursuant to the P&A Agreement and transactions subsequent to and in connection therewith.

43. On numerous occasions since the Petition Date, the Debtors have requested that JPMC confirm that the Accounts are demand deposit accounts and property of the Debtors, but JPMC has refused to do so, or has imposed unreasonable conditions on doing so, the Account Stipulation notwithstanding.

44. On October 28, 2008, the Debtors requested that JPMC turnover control of the Accounts to the Debtors. On numerous occasions thereafter, the Debtors have reiterated their request that JPMC turnover control of the Accounts to the Debtors, but JPMC has refused to do so, or has imposed unreasonable conditions on doing so, thereby denying the Debtors' estates use of the Deposits.

45. After several weeks of negotiations following October 28, 2008, JPMC finally agreed to allow interest to accrue on the Deposits, but only at a nominal rate. Thus, every day that JPMC continues to withhold the Deposits, realizing an economic advantage while enjoying increased liquidity, the Debtors' estates suffer further damage

⁴ In stark contrast to the nominal rate of return JPMC has agreed to make applicable to the Deposits, JPMC's average rate of return on interest-earning assets is 5.36%. See JPMorgan Chase & Co., Form 10-K, at 22 *Distribution of assets, liabilities and stockholders' equity; interest rates and interest differentials*.

because the Deposits are earning interest at a significant discount to a market rate and the estates' assets are not being maximized.

46. Nonetheless, JPMC continues to issue Account Statements indicating that the Deposits are deposit liabilities, and on information and belief, JPMC reports the Accounts as deposit liabilities to the Office of the Comptroller of the Currency and pays federal deposit insurance premiums on the Deposits, as it does for all of its deposit liabilities.

47. Further, in a proof of claim filed in the Chapter 11 Cases concerning certain federal tax refunds wired post-petition by the IRS to Account 0667, JPMC's understanding of the nature of the Account is made evident, stating that "[o]n September 30, 2008, the IRS wired the [tax refunds] *to WMI*." (Emphasis added.) Thus, JPMC recognizes the nature of the Accounts and the ownership of any funds deposited into the Accounts.

F. THE DEBTORS OWE NO AMOUNTS TO JPMC

48. JPMC does not possess any valid claims against the Debtors' estates arising prior to, or after, the Petition Date. Thus, even if JPMC had a legitimate basis for claiming set-off rights (which it does not), it holds no claim against the Debtors to apply such rights, leaving no conceivable basis for JPMC's refusal to pay the Deposits to the Debtors.

49. JPMC cannot assert any claims against the Debtors purportedly acquired pursuant to the P&A Transaction that would initially have inured to the benefit of WMB or WMB fsb, if any. The P&A Agreement expressly so provides. Section 3.1 of the P&A Agreement concerns the purchase of WMB's assets by JPMC. (P&A Agreement §

3.1). However, that section is expressly made subject to section 3.5, which provides that Schedule 3.5, "Certain Assets Not Purchased," enumerates certain assets not purchased, acquired, or assumed by JPMC under the P&A Agreement. (P&A Agreement § 3.5). Listed on Schedule 3.5 is "any interest, right, action, claim, or judgment against . . . any shareholder or holding company of [WMB]" (P&A Agreement, Schedule 3.5). A copy of Schedule 3.5 to the P&A Agreement is attached hereto as Exhibit F. Therefore, the P&A Agreement unambiguously provides that JPMC did not acquire any interest, right, action, claim, or judgment against WMI, WMB's former sole shareholder and holding company.

50. Thus, because JPMC asserts no claims other than those allegedly derived from WMB or WMB fsb,⁵ there are no grounds for the assertion of any purported rights of setoff by JPMC.

51. Similarly, without any valid claim against the Debtors, JPMC has no basis for asserting any lien or security interest in the Deposits in Account 1206, or any other Account, pursuant to the Security Agreement. Without the existence of obligations owed JPMC, there is nothing for any purported security interest to secure.

52. Moreover, even if JPMC did acquire some claim against the Debtors from WMB pursuant to the P&A Transaction or shortly thereafter from WMB fsb by merger (which it did not), such claims were transferred to JPMC from the Banks within the period commencing 90 days prior to the Petition Date. Therefore, because WMI was either insolvent at the time of, or rendered insolvent by, the P&A Transaction, the plain

⁵ The only claims that JPMC could possibly have against the Debtors that are not derivative of the Banks relate to administrative services rendered by JPMC. These, however, are being paid in the ordinary course and are immaterial to the Deposits in any event.

language of section 553(a)(2) of the Bankruptcy Code provides that JPMC cannot possess any right of setoff, as a result of acquiring such claims from the Banks, that would act as a defense to payment of the Deposits to the Debtors.

53. Further, to the extent any claims were acquired from WMB fsb after the commencement of the Chapter 11 Cases, the plain language of section 553(a)(2) of the Bankruptcy Code provides that JPMC has absolutely no basis to setoff such claims against the Debtors' Deposits, irrespective of the Debtors' solvency.

54. Setoff is also unavailable to JPMC where mutuality of parties does not exist due to the Bankruptcy Code's prohibition on triangular setoffs. The Deposits in WMI Investment Account 4704 are owed WMI Investment by JPMC. Even if JPMC did acquire some claim against the Debtors, such claim is asserted against WMI (and not WMI Investment). A setoff by JPMC of the Deposits JPMC owed WMI Investment against amounts JPMC claimed it was owed by WMI would be triangular and, therefore, prohibited due to a lack of mutuality.

55. Therefore, there exists no basis to support or defend JPMC's refusal to pay the Deposits.

FIRST CLAIM FOR RELIEF

Turnover Pursuant to 11 U.S.C. § 542

56. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs 1-55.

57. The Deposits are debts owed to the Debtors' estates that are matured and payable on demand.

58. The Debtors' estates have been without use of the Deposits.

59. JPMC has no right of setoff under section 553 of the Bankruptcy Code or any other applicable law with respect to the Deposits in the Accounts because JPMC does not possess any valid claims against the Debtors' estates.

60. To the extent it is determined that JPMC does hold claims against the Debtors' estates, JPMC has no right of setoff under section 553 of the Bankruptcy Code because any such claims were acquired within the period commencing 90 days prior to the Petition Date through the date hereof. Any claims acquired from WMB fsb would have been acquired after the commencement of the Chapter 11 Cases. Therefore, with respect to the approximately \$3.7 billion in WMB fsb Deposits, no such claims will provide JPMC with a right of setoff pursuant to section 553 of the Bankruptcy Code or any other applicable law.

61. WMI was either insolvent at the time of, or rendered insolvent by, the P&A Transaction. Therefore, any claims acquired from WMB will not provide JPMC with a right of setoff pursuant to section 553 of the Bankruptcy Code or any other applicable law.

62. Additionally, with respect to the Deposits in WMI Investment Account 4704, JPMC has no right of setoff under section 553 of the Bankruptcy Code or any other applicable law due to a lack of mutuality of claims as of the Petition Date.

63. Pursuant to section 542 of the Bankruptcy Code, JPMC is required to pay the Deposits in the Accounts, including pre-judgment interest at the highest applicable rate to be determined by the Court, to Plaintiffs WMI and WMI Investment.

64. Alternatively, the Deposits in the Accounts are property that Debtors WMI and WMI Investment may use pursuant to section 363 of the Bankruptcy Code.

65. JPMC has possession and custody of the Deposits in the Accounts and continues to exercise control over the Accounts.

66. The funds in the Accounts are of substantial value to the Debtors' estates.

67. Pursuant to section 542 of the Bankruptcy Code, JPMC is required to deliver to the Debtors the Deposits in the Accounts, including pre-judgment interest at the highest applicable rate to be determined by the Court.

SECOND CLAIM FOR RELIEF

Unjust Enrichment

68. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs 1-67.

69. JPMC has been enriched unjustly, realizing an economic advantage, by retaining possession of the Deposits and utilizing something of value that belongs to the Debtors.

70. JPMC has retained the benefit of the Deposits at the expense of the Debtors and their creditors in the Chapter 11 Cases. Retaining the Deposits at the Debtors' expense is contrary to the principles of equity and good conscience.

71. Plaintiffs do not have an adequate remedy of law.

72. Plaintiffs seek an order that JPMC has been unjustly enriched and directing JPMC to provide restitution to Plaintiffs in an amount to be determined by the Court.

RESERVATION OF RIGHTS

73. This complaint is being filed now because the Debtors deem it in the best interests of their estates to do so. The Debtors believe that additional claims in favor of one or more of the Debtors' estates against the Defendant may exist. Thus, the claims

asserted herein are brought without prejudice to any and all other rights, claims and defenses the Debtors' may have, and the Debtors' rights to amend the Complaint to assert additional rights, claims and defenses is reserved expressly.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs WMI and WMI Investment respectfully request that the Court enter judgment in favor of Plaintiffs

- A. Ordering JPMC to pay the Deposits, including pre-judgment interest, in the Accounts to WMI and WMI Investment;
- B. Ordering JPMC to pay restitution to WMI and WMI Investment in an amount equal to JPMC's unjust enrichment;
- C. Awarding Plaintiffs costs of suit herein; and
- D. Granting Plaintiffs such other legal or equitable relief as is just.

Dated: April 27, 2009
Wilmington, Delaware

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*Proposed Special Litigation and Conflicts
Co-Counsel to the Plaintiffs*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

<hr/>		x
<i>In re</i>	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i>	:	Case No. 08-12229 (MFW)
Debtors ¹	:	Jointly Administered
<hr/>		:
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	Adv. Pro. No. 09-50934 (MFW)
Plaintiffs,	:	Oral Argument Requested
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION	:	
Defendant.	:	
<hr/>		x

**OPENING BRIEF OF DEFENDANT JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION IN SUPPORT OF ITS MOTION TO DISMISS**

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National Association*

May 13, 2009

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share the principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

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Defendant JPMorgan Chase Bank, National Association (“JPMC”), by and through its undersigned counsel, respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012 for an order dismissing plaintiffs Washington Mutual, Inc.’s and WMI Investment Corp.’s (collectively, “Plaintiffs” or “WMI”) Complaint for Turnover of Estate Property, or, in the alternative, consolidating this adversary proceeding with JPMC’s earlier-filed adversary proceeding pending before this Court, which adversary proceeding puts at issue and would resolve all disputes with respect to the accounts at issue here. In support of its motion, JPMC respectfully states as follows.

NATURE AND STAGE OF THE PROCEEDING

This proceeding is a turnover action brought pursuant to 11 U.S.C. § 542 by Plaintiffs, who are also the Debtors in the above-captioned chapter 11 proceedings. Plaintiffs’ claims relate to six accounts that purportedly contain \$4 billion in alleged demand deposits (the “Disputed Accounts”) that were maintained at Washington Mutual Bank, Henderson, Nevada (“WMB”) and /or its subsidiary Washington Mutual Bank fsb (“WMB fsb”) when the Federal Deposit Insurance Corporation (“FDIC”) was appointed receiver for WMB. On December 30, 2008, pursuant to Title 12 of the United States Code, Plaintiffs submitted claims to the FDIC receivership, including claims that asserted Debtors’ interests in the Disputed Accounts. On January 23, 2009, the FDIC disallowed Debtors’ claims. On March 20, 2009, Plaintiffs sued the FDIC for disallowance of their claims in the U.S. District Court for the District of Columbia, *Washington Mutual, Inc., et al. v. FDIC*, Civil Action No. 1:09-cv-00533 (RMC) (the “D.C. Action”). JPMC has moved to

intervene in the D.C. Action. On March 24, 2009, JPMC also commenced an adversary action against Plaintiffs, Adversary Proceeding No. 09-50551 (MFW) (Bankr. D. Del.) (“JPMC’s Adversary Proceeding”), which includes claims related to the Disputed Accounts and a rule interpleader count to resolve all claims that any person may have in or to the Disputed Accounts, including the Federal Deposit Insurance Corporation as receiver for WMB.

Notwithstanding these pending disputes, Plaintiffs filed the instant complaint against JPMC seeking turnover of the same funds purportedly held in the Disputed Accounts, as well as restitution for alleged unjust enrichment. On April 29, 2009, the Official Committee of Unsecured Creditors filed a motion to intervene in this action.

SUMMARY OF ARGUMENT

1. Well-settled law—recently applied by this Court—provides that turnover actions pursuant to 11 U.S.C. § 542 are inappropriate, and may not be brought, to obtain property that is in dispute. *See, e.g., In re Lexington Healthcare Group*, 363 B.R. 713, 716 (Bankr. D. Del. 2007). Turnover pursuant to section 542 is not “a remedy to determine disputed rights of parties to property.” *In re Allegheny Health, Educ. & Research Found.*, 233 B.R. 671, 677 (Bankr. W.D. Pa. 1999).

2. Plaintiffs’ purported interests in the Disputed Accounts are hotly contested and are the subject of two pending litigations: (1) the D.C. Action instituted by Plaintiffs challenging the FDIC’s disallowance of their claims in the receivership administrative process, including their claims to the Disputed Accounts, and (2) JPMC’s Adversary Proceeding, which (among other things) asks this Court to

rule on whether claims related to the Disputed Accounts must be adjudicated in the D.C. Action. The pleadings in the D.C. Action and JPMC's Adversary Proceeding raise numerous issues of fact concerning the nature and character of the Disputed Accounts and the parties' relative rights to amounts in the Disputed Accounts. JPMC's Adversary Proceeding asserts JPMC's interests in the Disputed Accounts, and requests by rule interpleader "that all claims to the amounts . . . be adjudged [by the Court] and the funds . . . be properly disbursed." (A116, Adv. Compl. ¶ 212.)

3. In connection with the proof of claim process in the chapter 11 proceedings, the FDIC and at least two groups of WMB's bondholder creditors have asserted their own claims of interest in the Disputed Accounts.

4. Plaintiffs' complaint itself acknowledges (albeit mischaracterizes) the existence of a dispute that makes their turnover claim improper, by alleging that "JPMC claims it 'purchased' in excess of \$4 billion in cash deposits and that such cash deposits have somehow come to represent equity in WMB or WMBfsb." (Turnover Compl. ¶ 43.)

5. Nonetheless, through this action, Debtors ask the Court to ignore these pending disputes, which make their turnover claim inappropriate. *See In re Student Fin. Corp.*, 335 B.R. 539, 554 (D. Del. 2005). Debtors seek to bypass JPMC's pending interpleader claim, which would ensure that other parties may raise their claims to the Disputed Accounts. And Plaintiffs seek to sidestep adjudication in the District Court of the claims they brought themselves in the D.C. Action, which they commenced to challenge the FDIC's disallowance of their claims that relate to the very amounts that are the subject of this purported turnover action. Plaintiffs

instead seek the payment of approximately \$4 billion, despite significant questions as to what funds stand behind this purported liability, who would be responsible for paying the liability, and whether this is in whole or in part a liability at all. For all these reasons, Plaintiffs' complaint should be dismissed.

6. Alternatively, Plaintiffs' claims are manifestly compulsory counterclaims to those raised in JPMC's Adversary Proceeding, and should thus be litigated in that action to the extent the issues are not litigated in the D.C. Action. Therefore, if Plaintiffs' complaint is not dismissed in its entirety, the Court should consolidate this action with JPMC's Adversary Proceeding, which was filed more than a month earlier and could resolve all claims—including the FDIC's claims—to the Disputed Accounts at issue here.

STATEMENT OF FACTS

A. The Failure and Rescue of Washington Mutual Bank and Plaintiffs' Bankruptcy

On September 25, 2008, the Director of the Office of Thrift Supervision ("OTS") appointed the FDIC as receiver for WMB. The failure of WMB—a former bank subsidiary of WMI—stands as the single largest bank failure in U.S. history. Immediately after taking possession of WMB, the FDIC entered into that Purchase & Assumption Agreement (Whole Bank) with JPMC, dated September 25, 2008 (the "P&A", *see* A129 – A170.) Pursuant to the P&A, JPMC acquired substantially all of WMB's assets. Following the failure of WMB, Plaintiffs filed petitions for relief under chapter 11 of title 11 of the United States Code. *In re Washington Mutual, Inc.*, No. 08-12229 (MFW) (Bankr. D. Del.). In their Schedules

of Assets and Liabilities filed with this Court in the chapter 11 proceedings, Plaintiffs identified, among other things, the Disputed Accounts. (Turnover Compl. ¶ 21.)

B. The FDIC's Disallowance of Plaintiffs' Deposit Claims and the District Court Litigation

On December 30, 2008, Plaintiffs asserted claims against the Receivership by filing a proof claim with the FDIC. Plaintiffs' proof of claim included a purported "Deposit Claim" concerning Plaintiffs' alleged interests in the six Disputed Accounts they claimed to hold at WMB and/or WMB fsb.

On January 23, 2009, the FDIC issued its formal determination disallowing Plaintiffs' Deposit Claim. (*See* A53, Exhibit 2 to DDC Compl.) On March 20, 2009, Plaintiffs elected to litigate this dispute by instituting the D.C. Action against the FDIC in the U.S. District Court for the District of Columbia. In the D.C. Action, Plaintiffs once again asserted their Deposit Claim and specifically acknowledged the existence of a dispute, stating that "the FDIC and JPMorgan Chase continue to reserve certain rights with respect to the [six Disputed Accounts] . . . including rights under the Purchase and Assumption Agreement. (A37, DDC Compl. ¶ 49.) Because Debtors' claims in the D.C. Action challenge JPMC's ownership of assets it acquired from the FDIC, JPMC has moved to intervene in the action "to protect its significant property interests in those disputed assets." (A171 – A186, JPMC Motion to Intervene filed in the D.C. Action.) The FDIC has supported JPMC's intervention. (A258 – A260, Response of FDIC.) WMI has opposed it.

C. JPMC's Adversary Proceeding Against Plaintiffs

Debtors' Schedules of Assets and Liabilities claim interests in or ownership of assets JPMC purchased from the FDIC as receiver for WMB pursuant to the P&A in accordance with Title 12 of the United States Code. Accordingly, to preserve its rights, JPMC commenced an adversary action against Plaintiffs in their chapter 11 proceedings before this Court.

JPMC's adversary complaint includes claims relating to the Disputed Accounts. JPMC asserts that to the extent the Disputed Accounts reflect capital contributions, they are the property of JPMC under the terms of the P&A. (A87, Adv. Compl. ¶ 103.) JPMC also asserts that to the extent the Disputed Accounts reflect deposits, it has certain setoff rights. (A87 – A91, Adv. Compl. ¶¶ 104-115 (explaining how WMI's policies “created a broad contractual right of setoff against the [Disputed Accounts] . . . for the benefit of the Affiliated Banks and their subsidiaries.”).) In addition, JPMC's complaint alleges that certain entries in the Disputed Accounts reflect amounts, such as credits for tax refunds, that are the property of JPMC. (A92 – A93, Adv. Compl. ¶¶ 119-121.)

JPMC's complaint also alleges that between September 19, 2008 and September 24, 2008, in the days immediately preceding the FDIC receivership, WMI directed the recording of various book entries purporting to transfer approximately \$3.67 billion from WMB to WMB fsb. (A90 – A91, Adv. Compl. ¶ 114.) On September 24, 2008, general ledger entries were posted with a “retro” date of September 19, 2008, that describe it as “WMI contributes to FSB.” (*Id.*) However,

no cash or other funds were actually moved to or received by WMB fsb in connection with the purported transfer. (*Id.*)

Based upon these and other facts, JPMC's Adversary Proceeding seeks, among other forms of relief, (i) a declaration that WMI must proceed with its claims relating to the Disputed Accounts in the D.C. Action, (ii) a declaration that no valid deposit liability was created because of the \$3.67 billion book entry, (iii) a declaration determining JPMC's right to setoff, recoupment, imposition of a constructive trust, and/or enforcement of its security interest, and (iv) to interplead any remaining funds that constitute deposit liabilities so that all claims to the amounts can be adjudged and the funds can be properly disbursed, without subjecting JPMC to potential double-jeopardy for turning over funds (if that is deemed appropriate) to the wrong party.

D. Plaintiffs' Response to JPMC's Adversary Proceeding

On April 20, 2009, Debtors requested, and JPMC consented to, a four-week extension of time to answer or otherwise respond to JPMC's Adversary Proceeding. Rather than raise their assertions as counterclaims in JPMC's Adversary Proceeding, where they are indisputably compulsory counterclaims, Plaintiffs instead then filed this turnover complaint.

Although to establish their turnover claim the Debtors must show that there is *no* dispute concerning ownership of the Disputed Accounts, their complaint fails to mention that the Disputed Accounts are at issue in: (i) Plaintiffs' December 30, 2008 proof of claim submitted in the FDIC Receivership and disallowed by the FDIC on January 23, 2009, (ii) Plaintiffs' complaint against the FDIC in the D.C.

Action, (iii) JPMC's motion to intervene and proposed Answer and Counterclaim in the D.C. Action, (iv) JPMC's Adversary Proceeding, (v) a proof of claims submitted by WMB Bondholders, asserting that "the purported deposits are properly viewed, or should be treated, as capital contributions for which WMB and WMB's receivership estate have sole ownership" (*see* A227, Proof of Claim of Bank Bondholders ¶ 11), and (vi) a proof of claim filed by the FDIC, reserving its right to take certain actions to "defeat any claim asserted by the Debtors" with respect to the Disputed Accounts "[p]ending further investigation" (A197, Proof of Claim of FDIC ¶ 24). Plaintiffs also acknowledge in their pleadings that a dispute exists between them and JPMC concerning the accounts. (Turnover Compl. ¶ 43.)

ARGUMENT

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012 serves to test the sufficiency of the complaint. *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). The burden of demonstrating that the plaintiff has failed to state a claim upon which relief can be granted rests on the movant. *Young v. West Coast Indus. Relations Assoc., Inc.*, 763 F. Supp. 64, 67 (D. Del. 1991).

In deciding a motion to dismiss for failure to state a claim, the Court must accept as true all well pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. However, the Court is "not required to accept legal conclusions either alleged or inferred from the pleaded facts." *Kost*, 1 F.3d at 183. In ruling on a motion to dismiss, the Court "need not credit a complaint's 'bald assertions' or 'legal conclusions.'" *Cal. Pub. Employees' Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 143 (3d Cir. 2004) (quoting *Morse v. Lower Merion Sch. Dist.*, 132

F.3d 902, 906 (3d Cir. 1997)). In addition to the complaint itself, the Court may consider “items subject to judicial notice” and “matters of public record.” *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).²

I. PLAINTIFFS’ TURNOVER ACTION SEEKING POSSESSION OF ADMITTEDLY DISPUTED PROPERTY MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.

“Turnover under 11 U.S.C. § 542 is a remedy available to debtors to obtain what is *acknowledged* to be property of the bankruptcy estate.” *In re Hechinger Inv. Co. of Del., Inc.*, 282 B.R. 149, 161-62 (Bankr. Del. 2002) (quoting *In re Asousa P’ship.*, 264 B.R. 376, 384 (Bankr. E.D. Pa. 2001)). Consequently, this Court and courts throughout this Circuit recognize that “[t]urnover actions cannot be used to demand assets whose title is in dispute.” *In re Student Fin. Corp.*, 335 B.R. 539, 554 (D. Del. 2005) (citing *In re Allegheny Health, Educ. & Res. Found.*, 233 B.R. 671, 677-78 (Bankr. W. D. Pa. 1999); *In re Lexington Healthcare Group*, 363 B.R. 713, 715 (Bankr. D. Del. 2007); *see also, e.g., United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991) (“It is settled law that the debtor cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose

² JPMC respectfully requests that the Court take judicial notice of the contents of the documents contained in the attached Appendix in Support of Defendant JPMorgan Chase, National Association’s Motion to Dismiss Adversary Proceeding, consisting of pleadings and related document filed in proceedings before this Court and in the D.C. Action. *See Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888, 892 (D. Del. 1991) (noting that pursuant to Federal Rule of Evidence 201(b)(2), “the Court can take judicial notice of the contents of court records from another jurisdiction,” including “the briefs and petitions of the parties.”). *See also United States ex rel. Geisler v. Walters*, 510 F.2d 887, 890 n.4 (3d Cir. 1975) (stating that the court “of course” takes judicial notice of the briefs and petitions in other actions); *Lopez v. Howard*, No. 06-2361, 2007 WL 708989, *1 (3d Cir. Mar. 9, 2007) (taking judicial notice of court records as to litigation events).

title is in dispute.”); *In re Ven-Mar Int’l, Inc.*, 166 B.R. 191, 192-93 (Bankr. S.D. Fla. 1994) (“Section 542 does not provide trustees and debtors in possession with the ability to recover property where a dispute exists between the parties.”)

The fact that a dispute over an asset exists defeats a motion for turnover because “turnover under § 542 of the Code is not intended as a remedy to determine disputed rights of parties to property.” *In re Allegheny Health*, 233 B.R. at 677 (quoting *In re Johnson*, 215 B.R. 381, 386 (Bankr. N.D. Ill. 1997)); *see also In re FLR Co., Inc.*, 58 B.R. 632, 634 (Bankr. W.D. Pa. 1985) (“Implicit in the bankruptcy concept is the idea that the property being sought is clearly property of the Debtor but not in Debtor’s possession. Turnover, 11 U.S.C. § 542, is not the provision of the Code to determine the rights of the parties in legitimate contract disputes.”). Thus this Court has observed, “[w]here there is legitimate dispute about the ownership of property a trustee seeks to recover, turnover under section 542 is not appropriate.” *In re Lexington Healthcare Group*, 363 B.R. at 716. Therefore, courts routinely dismiss purported turnover actions for failure to state a claim where plaintiffs have improperly sought to use Section 542 to obtain property currently the subject of dispute. *See, e.g., id.* at 717 (“Because a dispute exists about whether the security deposit is property of the estate, this Court concludes that the Trustee cannot state a claim for turnover.”); *In re Student Fin. Corp.*, 335 B.R. at 554; *In re Hechinger Inv. Co. of Del., Inc.*, 282 B.R. at 161-62.

Here, the Plaintiffs have acknowledged and the record before the Court establishes that a bona fide dispute exists that requires dismissal of the complaint.³

A. Plaintiffs' Complaint Should be Dismissed Because It Fails to Plead an Undisputed Interest in the Disputed Accounts.

Plaintiffs' attempt to use the turnover provision of 11 U.S.C. § 542 to obtain possession of the Disputed Accounts is manifestly inappropriate under settled law. Far from pleading "an absolute and undisputed right to recover" the Disputed Accounts, *In re Lexington Healthcare Group*, 363 B.R. at 715, Plaintiffs in their turnover complaint plead the opposite, asserting that "JPMC claims it 'purchased' in excess of \$4 billion in cash deposits and that such cash deposits have somehow come to represent equity in WMB or WMBfsb." (Turnover Compl. ¶ 43.)⁴

³ JPMC believes that the Debtors' independent turnover action, in addition to failing on the merits, also must be dismissed for lack of subject matter jurisdiction in this Court to the extent the Disputed Accounts are at issue in the D.C. Action or subject to the receivership process. JPMC reserves all of its rights with respect to the jurisdictional issues presented. The procedures set forth in Title 12 of the United States Code govern "any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any" failed depository institution or "any claim relating to any act or omission of" either a failed institution or the FDIC as its receiver. 12 U.S.C. §§ 1812(d)(13)(D)(i), (ii). This jurisdictional bar operates in actions against a bank purchasing assets out of the receivership process because, to "permit claimants to avoid [the jurisdictional bar] by bringing claims against the assuming bank . . . would encourage the very litigation that FIRREA sought to avoid." *Village of Oakwood v. State Bank & Tr. Co.*, 539 F.3d 373, 386 (6th Cir. 2008).

⁴ Plaintiffs assert in paragraph 41 of their turnover complaint that they withdrew their motion seeking approval of the Account Stipulation when "JPMC would not agree to a form of order approving the Account Stipulation." This statement is patently false. In fact, the Account Stipulation was withdrawn following objections filed by certain creditors of the receivership and the FDIC. (A84 – A85,

Although WMI mischaracterizes JPMC's claims, WMI's acknowledgement of the existence of a dispute is fatal to its complaint. As the Court in *In re Student Fin. Corp.* observed, the analysis under Rule 12(b)(6) of a purported turnover claim in light of an acknowledged dispute concerning the subject property is straightforward:

[I]n order to state a claim for turnover of property under § 542, a plaintiff must allege that transfer of the property has already been avoided or that the property is otherwise the undisputed property of the bankruptcy estate. Here, the Trustee has not made, and cannot make, that allegation. Accordingly, the Court will dismiss Count VIII of the Complaint pursuant to Rule 12(b)(6).

335 B.R. at 554. Here, Plaintiffs cannot make the allegation that the Disputed Accounts are the “undisputed property of the bankruptcy estate,” but have instead acknowledged that “the interests in question here . . . are very much in dispute.” *Id.* (See, e.g., Turnover Compl. ¶¶ 5, 44.) Accordingly, Plaintiffs' turnover action must be dismissed. *In re Student Fin. Corp.*, 335 B.R. at 554; *In re Hechinger Inv. Co.*, 282 B.R. at 161-62; *In re Lexington Healthcare Group*, 363 B.R. at 716-17.⁵

Adv. Compl. ¶ 95; see A1 – A13 (Objection of WMB Noteholder Group), A14 – A20 (Response and Limited Objection of FDIC.)

⁵ Plaintiffs' reliance on account statements issued by JPMC (Turnover Compl. ¶ 23) is unavailing and cannot be relied upon to deny the existence of a genuine dispute as to the nature of the accounts and as to any amounts in them. Those account statements are generated by JPMC in the ordinary course of its operations, are dependent upon information that is itself in dispute, post-date the activities that give rise to the disputes, have been issued subject to a full reservation of rights, and do not inform the dispute as to the nature of the accounts.

B. Bona Fide Disputes Exist Concerning Ownership of the Disputed Accounts, Precluding Turnover as a Matter of Law.

Even in the absence of Plaintiffs' dispositive admissions, Plaintiffs' turnover action must be dismissed because the Disputed Accounts are central to ongoing litigation. *In re Student Fin. Corp.*, 335 B.R. at 554. Although tellingly omitted from their complaint, the Disputed Accounts are the subject of Debtors' lawsuit against the FDIC pending in the U.S. District Court of the District of Columbia and JPMC's Adversary Proceeding. In such circumstances, the law is clear that a turnover action under Section 542 is improper and must be dismissed: "Unless there is no question remaining as to the liability of the defendant to the estate, *e.g.*, a final judgment from a court of competent jurisdiction or a stipulation by the defendant, it cannot be said that no dispute exists, and the money Debtor seeks to recover is not with the Debtor's constructive possession [for purposes of turnover pursuant to 11 U.S.C. § 542]." *In re Satelco, Inc.*, 58 B.R. 781, 786 (Bankr. N.D. Tx. 1986); *see also In re Chick Smith Ford, Inc.*, 46 B.R. 515, 518 (Bankr. M.D. Fla. 1985) ("To approve the proposition urged by the Debtor would be without a doubt, a gross violation of the most basic concepts of due process to which every Defendant is entitled, which involves at least the right to enjoy all the procedural safeguards otherwise available to all litigants in civil litigation.").

Moreover, although this motion is constrained by the facts alleged in Plaintiffs' complaint and those available for judicial notice, even that limited record clearly establishes that the disputes before this Court and the D.C. District Court are complex. By way of example, the book entry transfer that purportedly created a \$3.7

billion liability never resulted in the transfer of funds. (A90 – A91, Adv. Compl. ¶¶ 100, 113-14.) Further complicating matters are Plaintiffs’ arguments about setoff rights. Plaintiffs note that in adjudicating any dispute regarding these accounts (both in this action and, presumably, in JPMC’s Adversary Proceeding) they intend to argue that Section 553(a)(2) limits the ability of JPMC to assert setoff rights. Section 553(a)(2) states, in part, that a creditor’s setoff rights may be affected if the debt owed to the creditor was incurred “while the debtor was insolvent.” Therefore, any Section 553(a)(2) analysis in this case will require adjudication of Plaintiffs’ claim that “WMI was either insolvent at the time of, or rendered insolvent by, the P&A transaction.” (Turnover Compl. ¶ 61.) This will require a detailed analysis of the financial condition of WMI and expert testimony. Moreover, because Debtors’ solvency analysis depends on final adjudication of the effect of the P&A, a necessary predicate to the Court addressing Debtors’ solvency assertion is resolution of *all* of the claims in JPMC’s Adversary Proceeding relating to what JPMC or WMI owned at the time of receivership and following the P&A transaction. Given these disputes, Plaintiffs’ attempt summarily to dismiss JPMC’s setoff rights is improper. Moreover, Plaintiffs’ setoff arguments run headlong into the dispute created by JPMC’s Adversary Proceeding, underscoring why this turnover action should be dismissed.

By way of another example, Plaintiffs assert that all of the funds in the Disputed Accounts “were specifically intended to be held in demand deposit accounts for the Debtors’ benefit.” (Turnover Compl. ¶ 5.) The allegations in JPMC’s Adversary Proceeding throw this allegation into dispute, by describing the \$234 million in tax refunds paid to Plaintiffs but due and rightly delivered to JPMC. (A92

– A93, Adv. Compl. ¶¶ 119-121.) Moreover, Exhibit A to Plaintiffs’ turnover complaint underscores the problem by listing two book entry transfers from WMB on September 19, 2008—of \$177 million and \$145 million respectively—that raise similar issues of fact with respect to tax amounts that are not for Debtors’ benefit.

The existence of these disputes not only defeats Plaintiffs’ turnover claim, but it highlights the importance JPMC’s interpleader claim. This Court should be provided the opportunity to hear from all interested parties concerning the Disputed Accounts so that it can determine whether these are deposit accounts backed by funds and, if so, can ensure that any funds are properly disbursed, without subjecting JPMC to potential double-jeopardy for turning over assets to the wrong party.

C. Plaintiffs’ Interpretation of the P&A Agreement Does Not Bar Dismissal of the Complaint.

In an attempt to minimize the extent of the dispute, Plaintiffs next assert that the P&A precludes JPMC from asserting any claims against WMI. (*See* Turnover Compl. ¶¶ 49-50.) To begin, a further possible dispute between the parties as to their respective rights to assert claims related to the Disputed Accounts is simply another basis for dismissal of Plaintiffs’ complaint. Even if, however, the Court were to entertain this argument, it has no merit.

Plaintiffs challenge Section 3.5 of the P&A, which sets forth a narrow class of assets that JPMC did not purchase from the FDIC. Specifically, the FDIC maintained its right to assert certain claims against “any shareholder or holding company of” WMB were not assigned. (A168, Schedule 3.5 to P&A.) Plaintiffs

creatively interpret this provision (i) as barring JPMC from bringing certain claims against WMI, and (ii) providing a third-party benefit to WMI or other wrongdoing shareholders. What Plaintiffs plainly overlook is that the P&A did not divest JPMC of any rights it had before or after the transaction with the FDIC. The P&A does not strip JPMC of rights as owner of assets. The P&A also does not alter JPMC's rights as successor-in-interest to WMB that arise from its acquisition of the assets of WMB. The P&A speaks only to specific rights reserved by the FDIC. The P&A does not waive JPMC's right to pursue its own claims against Plaintiffs, including claims arising from Plaintiffs' inclusion of JPMC's assets in their Schedules of Assets and Liabilities filed with this Court in the chapter 11 proceedings *after* the P&A was executed.⁶

II. ALTERNATIVELY, PLAINTIFFS' ACTION SHOULD BE CONSOLIDATED WITH JPMC'S ADVERSARY PROCEEDING.

Alternatively, to the extent the Court does not dismiss Plaintiffs' complaint in its entirety, JPMC respectfully submits that any remaining claims—which constitute mandatory counterclaims to JPMC's adversary complaint⁷—should be consolidated with the proceedings on JPMC's earlier-filed adversary complaint.

⁶ Plaintiffs' interpretation of the P&A is tantamount to contending that had WMI stolen \$100 million from JPMC the day before or the day after the receivership, the P&A would bar JPMC from pursuing a claim against WMI for recovery of its money. What is at issue between the parties and what gives rise to JPMC's right to setoff are WMI's efforts to lay claims to assets and interests that JPMC rightfully acquired from the FDIC as receiver. Thus, JPMC's claims against WMI are for actions WMI took to interfere with JPMC's acquisition following the filing of its bankruptcy petition and remain the right of JPMC to pursue.

⁷ Plaintiffs assert a second claim for unjust enrichment based upon the same assertions that the Disputed Accounts are Plaintiffs' property. Once the turnover

Under Federal Rule of Civil Procedure 13 and Federal Rule of Bankruptcy 7013, Plaintiffs' claims in this action to the Disputed Accounts are mandatory counterclaims to JPMC's earlier-filed adversary complaint involving JPMC's claims to the same accounts. *See* Fed. R. Civ. P. 13(a); *In re Washington Mfg. Co.*, 118 B.R. 555, 563-64 (Bankr. M.D. Tenn. 1990) (claims raised in trustee's adversary complaint filed day after creditor's adversary complaint constituted compulsory counterclaims to the creditor's claims as "offshoots of the same basic controversy") (quoting *Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F.2d 631, 634 (3rd Cir. 1961).) In light of the goals of Rule 13 of promoting efficiency by requiring all claims arising out of the same "transaction or occurrence" to be adjudicated in the same proceeding, "it is much more efficient to have the [two] adversary proceedings consolidated under Bankruptcy Rule 7042." *In re Washington Mfg. Co.*, 118 B.R. at 564; *In re Aerni*, 86 B.R. 203, 206 (Bankr. D. Neb. 1988) ("Rule 13 prevents an unnecessary multiplicity of litigation, and promotes the prompt resolution of all disputes involving common matters.").

Plaintiffs' claim to the Disputed Accounts can be resolved efficiently, along with all other claims to the Disputed Accounts, in JPMC's Adversary Proceeding. As a result, plaintiffs' turnover action should be consolidated with JPMC's earlier filed adversary action. *In re Washington Mfg. Co.*, 118 B.R. at 564.

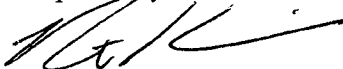
claim is dismissed, there is no sensible basis for the stand-alone unjust enrichment claim to survive as a separate adversary proceeding. This claim should be dismissed and Debtors should be instructed to file it as a compulsory counterclaim in JPMC's Adversary Proceeding.

CONCLUSION

For the foregoing reasons, JPMC respectfully submits that the claims raised in Plaintiffs' turnover complaint should be dismissed. In the alternative, to the extent the Court determines the claims raised in Plaintiffs' turnover complaint may proceed, JPMC respectfully submits proceedings on those claims should be consolidated with proceedings on JPMC's earlier-filed adversary action.

Dated: May 13, 2009
Wilmington, Delaware

Respectfully submitted,



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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

_____	x	
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <i>et al.</i>	:	Case No. 08-12229 (MFW)
	:	
Debtors. ¹	:	Jointly Administered
_____	:	
WASHINGTON MUTUAL, INC. AND	:	
WMI INVESTMENT CORP.,	:	Adv. Pro. No. 09-50934 (MFW)
	:	
Plaintiffs,	:	
	:	Oral Argument Requested
v.	:	
	:	
JPMORGAN CHASE BANK,	:	
NATIONAL ASSOCIATION,	:	
	:	
Defendant.	:	
_____	x	

**REPLY BRIEF OF DEFENDANT JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION IN FURTHER SUPPORT OF ITS MOTION TO DISMISS**

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June 3, 2009

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share the principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

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PRELIMINARY STATEMENT

There is a single, narrow issue before the Court: does this Court's recent holding in *In re Lexington Healthcare Group*—that turnover under 11 U.S.C. § 542 is inappropriate where “[t]here is a legitimate dispute about the ownership of property” 363 B.R. 713, 716 (Bankr. D. Del. 2007)—require dismissal of this action. Plaintiffs assert ownership of six accounts that purportedly contain \$4 billion in alleged demand deposits (the “Disputed Accounts”). The pleadings and other documents available to the Court on this motion to dismiss² make it clear that there exist at least three legitimate disputes, comprised of many disputed issues, that make turnover pursuant to Section 542 manifestly inappropriate.

First, Plaintiffs themselves have filed a lawsuit against the Federal Deposit Insurance Corporation (“FDIC”) in the U.S. District Court for the District of Columbia that raises a dispute as to ownership interests in the Disputed Accounts.³ If there were not a bona fide dispute between Plaintiffs and the FDIC regarding interests in the Disputed Accounts, Plaintiffs would not have included in the D.C. Action a “Deposit Claim” that is based on these same accounts. (A36-38, 47, DDC Compl. ¶¶ 47-50.)⁴ Plaintiffs cannot prosecute a claim in the D.C. Action contesting the

² JPMC has refrained from delving into the facts that would evidence the many matters in dispute, addressing only matters properly considered by the Court on a motion to dismiss.

³ *Washington Mutual, Inc., et al. v. FDIC*, Civil Action No. 1:09-cv-00533 (RMC) (the “D.C. Action”).

⁴ Citations to “A__” reference the Appendix in Support of Defendant JPMorgan Chase Bank, National Association’s Motion to Dismiss Adversary Proceeding, submitted with JPMC’s opening brief.

FDIC's interests in the Disputed Accounts and at the same time pretend that there is not a legitimate dispute with respect to those same accounts.

Second, JPMorgan Chase Bank, N.A. ("JPMC") has filed an adversary proceeding in this Court asserting rights to and interests in the Disputed Accounts.⁵ If JPMC's claims relating to the Disputed Accounts were not a legitimate dispute, Plaintiffs could have moved to dismiss these claims. Instead, Plaintiffs elected to answer that complaint and proceed to an adjudication on the merits. Plaintiffs' answer and counterclaims in the JPMC Adversary Proceeding not only establishes the existence of a bona fide dispute, it also highlights the range of issues relating to the accounts that are in dispute.

Third, both the FDIC and two sets of Washington Mutual Bank ("WMB") bondholders have filed claims asserting ownership interests in the Disputed Accounts in the proof of claim process in Plaintiffs' chapter 11 proceedings. The WMB bondholders specifically allege that the Disputed Accounts are properly viewed as capital contributions for which WMB or WMB's receivership estate have sole ownership. (A227.) The FDIC (in addition to the defenses and arguments it will propound in the D.C. Action) asserts a right to take certain actions to defeat Plaintiffs' ownership claims, depending, in part, on how the other disputes are resolved. (A197.) These proofs of claim further evidence bona fide disputes relating to the

⁵ *JPMorgan Chase, N.A. v. Washington Mutual, Inc., et al. (In re Washington Mutual, Inc.)*, Adversary Proceeding No. 09-50551 (MFW) (Bankr. D. Del.) ("JPMC's Adversary Proceeding").

Disputed Accounts and that the parties claiming interests in the Disputed Accounts are not limited to Plaintiffs and JPMC.

The pendency and status of these disputes and the holding of *In re Lexington Healthcare Group* lead to the conclusion that this turnover proceeding should be dismissed because “[t]here is a legitimate dispute about the ownership of property. . . .” 363 B.R. at 716. Rather than address this point, Plaintiffs essentially label the existing disputes as “absurd,” ask this Court to forgo consideration of whether there is a complaint that can sustain a motion to dismiss, and urge the Court to rush straight to summary judgment. This tactic overlooks the further reasoning set out in *In re Lexington Healthcare Group*, in which this Court explained that summary judgment principles are inapplicable when deciding a motion to dismiss a turnover claim. *Id.* This tactic also makes no sense because there are two pending litigations—the D.C. Action and the JPMC Adversary proceeding—in which Plaintiffs can seek to have these claims adjudicated on the merits. Calling the disputes raised in these lawsuits “absurd” does not make these disputes go away nor does it address the independent basis for dismissal: that this turnover action is precluded by the jurisdictional bar contained in Title 12 of the United States Code.

ARGUMENT

I. BECAUSE THERE ARE DISPUTES OVER OWNERSHIP OF THE FUNDS, PLAINTIFFS’ TURNOVER ACTION MUST BE DISMISSED.

The narrow question raised by JPMC’s motion to dismiss is whether a “legitimate dispute about the ownership of [the] property” exists, such that turnover under Section 542 is inappropriate. *In re Lexington Healthcare Group*, 363 B.R. at

716; *see also In re Student Fin. Corp.*, 335 B.R. 539, 554 (D. Del. 2005) (“[t]urnover actions cannot be used to demand assets whose title is in dispute.”); *In re Allegheny Health Educ. & Research Found.*, 233 B.R. 671, 677 (Bankr. W.D. Pa. 1999).⁶ There are no fewer than three ongoing disputes that must lead to dismissal of the turnover claims.⁷ Plaintiffs’ response—essentially an attempt to belittle the nature and scope of the disputes—cannot rescue this complaint from dismissal.

A. Plaintiffs Created a Bona Fide Dispute By Asserting “Deposit Claims” Against the FDIC, Including in the D.C. Action.

On December 30, 2008, Plaintiffs elected to assert claims against the FDIC receivership, including “Deposit Claims,” claims alleging interests in the Disputed Accounts. The FDIC disallowed Plaintiffs’ claims on January 23, 2009. On March 20, 2009, Plaintiffs decided to challenge the FDIC’s disallowance not through the available administrative procedures, but rather through litigation. *See* 12 U.S.C. § 1821(d)(6)(A) (“a claimant may request administrative review of a claim . . . or file a suit”). Plaintiffs chose to file a complaint in federal court that alleges “Deposit Claims” and contests the FDIC’s interests in the Disputed Accounts. (A36-38, 47, DDC Compl. ¶¶ 47-50.)

⁶ JPMC respectfully requested in its opening brief (p. 9 n.2) that the Court take judicial notice of the contents of the documents contained in the Appendix in Support of Defendant JPMorgan Chase, National Association’s Motion to Dismiss Adversary Proceeding. *Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888, 892 (D. Del. 1991).

⁷ Plaintiffs’ attempt to mischaracterize certain allegations in the turnover complaint does not cure the fact that Plaintiffs’ complaint fails to plead “an absolute and undisputed right to recover” the Disputed Accounts, *In re Lexington Healthcare Group*, 363 B.R. at 715, as set forth at pp. 11-13 of JPMC’s opening brief.

JPMC has moved, with the FDIC's support, to intervene in the D.C. Action "to protect its significant property interests in those disputed assets," including the Disputed Accounts. (A178.) JPMC's interests, as alleged in its pleading, include seeking an adjudication that the FDIC disallowance of Plaintiffs' "Deposit Claims" was proper and should not be disturbed. (A171-A186, JPMC Motion to Intervene filed in the D.C. Action.)

Given the pendency of the dispute in the D.C. Action, it is not reasonable for Plaintiffs to deny the existence of a "legitimate dispute" about ownership of and interests in the Disputed Accounts. The D.C. Action creates a bona fide dispute as to ownership interests in the Disputed Accounts that must result in dismissal of the turnover claim.

B. JPMC's Adversary Proceeding Establishes a Bona Fide Dispute That Precludes Turnover as a Matter of Law.

JPMC's Adversary Proceeding also establishes a bona fide dispute regarding ownership of the Disputed Accounts. JPMC's Adversary Proceeding asks this Court to (i) decide whether claims related to the Disputed Accounts must be adjudicated in the D.C. Action; (ii) decide whether a valid deposit liability was created because of the highly unusual \$3.67 billion book entry just prior to the FDIC receivership; (iii) determine JPMC's right to setoff, recoupment, imposition of a constructive trust, and/or enforcement of its security interest; and (iv) interplead any remaining funds that constitute deposit liabilities so that all claims to the amounts can be adjudged and the funds can be properly disbursed, without subjecting JPMC to potential double-jeopardy for turning over funds to the wrong party. The existence of

pending litigation such as this, that includes competing claims to the Disputed Accounts, is itself evidence of a bona fide dispute. *See In re J.T. Moran Fin. Corp.*, 124 B.R. 931, 938 (S.D.N.Y. 1991) (concluding that a dispute existed that precluded turnover because defendants asserted counterclaims disputing that debt was owed); *In re Satelco, Inc.*, 58 B.R. 781, 786 (Bankr. N.D. Tex. 1986) (finding turnover not available “[u]nless there is no question remaining as to the liability of the defendant to the estate, e.g., a final judgment from a court of competent jurisdiction or a stipulation by the defendant”).

Plaintiffs make two arguments in an effort to have the Court look past JPMC’s Adversary Proceeding. First, Plaintiffs characterize JPMC’s Adversary Proceeding as facially illegitimate because it is a “manufacture[d]” dispute. (Opp. Br. at 9.) Plaintiffs had the opportunity to move to dismiss JPMC’s complaint, if it were facially invalid. Instead, plaintiffs elected to proceed with litigation on the merits. This underscores the existence of a dispute that makes turnover inappropriate.

Second, Plaintiffs suggest that there are no specific factual allegations establishing a valid dispute. (Opp. Br. at 10-11.) This argument is without basis. By way of examples, JPMC alleges in its adversary complaint complex issues regarding the nature, character and ownership of the approximately \$4 billion in dispute, and claims that to the extent the Disputed Accounts reflect capital contributions, they are the property of JPMC under the terms of the P&A. (A83-A87, Adv. Comp. ¶¶ 93-103.) In addition, JPMC’s complaint alleges that certain entries in the Disputed Accounts reflect amounts, such as credits for tax refunds, that are the property of

JPMC. (A92-A93, Adv. Compl. ¶¶ 119-121.)⁸ JPMC’s complaint also alleges that between September 19, 2008 and September 24, 2008, in the days immediately preceding the FDIC receivership, WMI directed the recording of various book entries purporting to transfer approximately \$3.67 billion from WMB to WMB fsb that never resulted in the transfer of funds although general ledger entries were posted that describe it as “WMI contributes to FSB.”⁹ (A90-A91, Adv. Compl. ¶ 114.)

Courts in this circuit have found a bona fide dispute precluding turnover based upon much less. Plaintiffs rely upon *In re Jamuna*, 357 B.R. 324 (Bankr. E.D. Pa. 2006), but that court held that there *was in fact a bona fide* dispute precluding a turnover claim simply because the defendants “adamantly” disputed interests in the property in briefing the issue. *In re Jamuna*, 357 B.R. at 334. That outcome is not surprising because “[t]urnover under 11 U.S.C. § 542 is a remedy

⁸ Plaintiffs assert that the transfer of tax funds received into the Disputed Accounts that are allegedly due to JPMC somehow resolves any disagreement with respect to ownership of the Disputed Accounts and the funds contained therein. (Opp. Br. p. 12.) Clearly, evidence that the funds in the accounts do not belong to Debtors is evidence of a dispute as to ownership that makes Plaintiffs’ turnover claim inappropriate.

⁹ While not necessary to resolve the pending motion, reviewing the answer and eighteen counterclaims filed by Plaintiffs in the JPMC Adversary Proceeding only reinforces that there are allegations that will need to be tested in discovery to resolve the pending disputes. For example, Plaintiffs allege that the \$3.67 billion was transferred by them from WMB to WMB fsb—and then loaned back in a roundtrip transaction—just days before the FDIC receivership in the midst of a two-week period, when they admit WMB had incurred deposit outflows of approximately \$17 billion, when they acknowledge WMB was under “significant liquidity pressures” that were the subject of discussions with regulators, and at a time they allege WMB was insolvent. (Debtors’ Answer at ¶ 114 and Counterclaims at ¶¶ 23-28, filed in JPMC’s Adversary Proceeding on May 29, 2009, D.I. 23.) Under these suspicious alleged circumstances, given the pending disputes over ownership, Plaintiffs’ turnover claim is inappropriate.

available to debtors to obtain what is acknowledged to be property of the bankruptcy estate.” *In re Hechinger Inv. Co. of Del., Inc.*, 282 B.R. 149, 161-62 (Bankr. Del. 2002) (quoting *In re Asousa P’ship.*, 264 B.R. 376, 384 (Bankr. E.D. Pa. 2001)).¹⁰

Moreover, emphasizing the many disputes that exist, Plaintiffs in their answer in the JPMC Adversary Proceeding dispute virtually all of JPMC’s factual allegations concerning, among other things, the formation, operation and character of the Disputed Accounts, the nature and details of the purported \$3.7 billion transfer WMI directed from WMB to WMB fsb without ever delivering good funds to WMB fsb, the extent of capital contributions to WMB by WMI, and the terms and conditions of intercompany accounts between Plaintiffs and their affiliates and the extent of rights of setoff and recoupment that apply. (WMI Answer at ¶¶ 93-124.) While Plaintiffs and JPMC disagree on the merits, these are “legitimate disputes.”

C. Plaintiffs Ignore the Dispute Created by Third-Party Claims.

Plaintiffs fail to acknowledge that on or about March 31, 2009, the FDIC and at least two groups of WMB bondholder creditors asserted their own interests in the Disputed Accounts by filing claims in the chapter 11 proceedings before this Court. (*See* A197, A227.) The WMB Bondholders assert that “the purported deposits are properly viewed, or should be treated, as capital contributions for which WMB and WMB’s receivership estate have sole ownership.” (A 227,

¹⁰ Plaintiffs’ reliance on caselaw from jurisdictions where individual courts have held that a legitimate dispute does not preclude turnover actions are inapposite here and certainly do not assist their argument that JPMC has not established a bona fide dispute. *See, e.g., In re Kids World of Am., Inc.*, 349 B.R. 152 (Bankr. W.D. Ky. 2006); *In re Rawson*, 40 B.R. 167 (Bankr. N.D. Ohio 1984).

Proof of Claim of Bank Bondholders ¶ 11.) The FDIC likewise recognizes that resolution of the pending disputes may result in it asserting direct claims (beyond its arguments and defenses in the D.C. Action) with respect to the Disputed Accounts. (A197, Proof of Claim of FDIC ¶ 24.) These third party claims are further evidence of a bona fide dispute precluding turnover.

D. Plaintiffs' Attempts to Argue the Merits of its Claims are Misplaced.

The fact that Plaintiffs intend to challenge the merits of the claims in the JPMC Adversary Proceeding, and have begun to collect evidence in support of their arguments, does not defeat this motion to dismiss. Plaintiffs' repeated attempts to argue the merits of their recently filed summary judgment motion miss the point. Plaintiffs cannot seek adjudication of the merits of their claims if there is not a valid complaint before the Court. *See, e.g., Orion Power Midwest, L.P., v. Am. Coal Sales Co.*, No. 2:05-cv-555, 2007 WL 4190762, *2 (W.D. Pa. Nov. 21, 2007) (“the question at this juncture of the case is not whether Plaintiff will prevail on the merits, but only whether Plaintiff’s contentions . . . survive a motion to dismiss.”) An action seeking turnover under Section 542 is not a proper vehicle for resolving disputes over competing claims to ownership of an asset, and the mere existence of such disputes requires dismissal. If not, then there would be no difference between a turnover claim and an action seeking adjudication of a contested claim.

As this Court has previously ruled, the analysis required here—of whether a bona fide dispute exists—was never intended to require a full adjudication of the merits. Thus, in dismissing a claim for turnover pursuant to Section 542 in *In*

re Lexington Healthcare Group, this Court rejected the trustee's attempt to invoke summary judgment principles. 363 B.R. at 716. This Court explained that the defendant's motion to dismiss a turnover claim did "not seek[] summary judgment on the merits of *their* entitlement to the security deposit. Instead, they argue that because title to the security deposit is in dispute, the Trustee cannot even seek a turnover of those funds." *Id.* The same principle applies here. Plaintiffs cannot use JPMC's motion to dismiss as a basis for an early adjudication of the merits.

This result is particularly appropriate here because dismissal of this turnover action will not prejudice Plaintiffs. Plaintiffs have the ability to litigate their claims related to the Disputed Accounts, on the merits, in the first-filed D.C. Action that they commenced, or in the JPMC Adversary Proceeding. In fact, dismissal of the turnover action would facilitate the efficient resolution of claims by all parties relating to the Disputed Accounts either in the D.C. Action or JPMC's Adversary Proceeding pending in this Court.

II. THIS ACTION SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

On June 1, 2009, the FDIC moved to intervene in this turnover action and filed a motion to stay or in the alternative, dismiss Plaintiffs' complaint. (*See* D.I. 29.) The FDIC argues, among other things, that Plaintiffs' turnover action "violates the jurisdictional bar" contained in Title 12 of the United States Code and, as a result, "should be dismissed." (FDIC Motion to Stay or Dismiss ¶ 12, D.I. 29.) The FDIC points out that because Plaintiffs "seek immediate possession of the balances allegedly held in [the Disputed Accounts]" and "JPMC has raised a number

of issues regarding that claim,” this turnover action is “[w]ithout question . . . seeking a ‘determination of rights with respect to assets’ of WMB in violation of section 1821(d)(13)(D)(i).” (*Id.* ¶ 14.) Furthermore, the FDIC argues Plaintiffs’ turnover action is independently barred by Section 1821(d)(13)(D)(ii) because Plaintiffs’ “complaint includes numerous assertions regarding the meaning and effect of provisions of the P&A Agreement on the Debtors’ entitlement” to the Disputed Accounts. (*Id.* ¶ 16.)¹¹ For these independent reasons, the entirety of Plaintiffs’ complaint should be dismissed.

III. ALTERNATIVELY, PLAINTIFFS’ ACTION SHOULD BE CONSOLIDATED WITH JPMC’S ADVERSARY PROCEEDING.

Plaintiffs assert no substantive argument why, to the extent the Court does not dismiss Plaintiffs’ complaint in its entirety, any remaining claims should not be consolidated with the proceedings on JPMC’s earlier-filed adversary complaint. Plaintiffs do not dispute that their claims to the Disputed Accounts are mandatory counterclaims to JPMC’s earlier-filed adversary complaint involving JPMC’s claims to the same accounts, and in fact have since asserted a counterclaim alleging ownership of the Disputed Accounts in JPMC’s Adversary Proceeding. (Debtors’ Counterclaims ¶¶ 167-171.) *See* Fed. R. Civ. P. 13(a). Moreover, Plaintiffs’ claim to

¹¹ As noted in its opening brief (p. 11 n.3), JPMC argued that Debtors’ turnover action, in addition to failing on the merits, must be dismissed for lack of subject matter jurisdiction in this Court to the extent the Disputed Accounts are at issue in the D.C. Action or subject to the receivership process. *See* 12 U.S.C. §§ 1821(d)(13)(D)(i), (ii); *Village of Oakwood v. State Bank & Tr. Co.*, 539 F.3d 373, 386 (6th Cir. 2008) (holding that the Section 1821(d)(13)(D) jurisdictional bar operates in actions against a bank purchasing assets out of the receivership process). Plaintiffs did not respond in their opposition papers to this independent basis for dismissal.

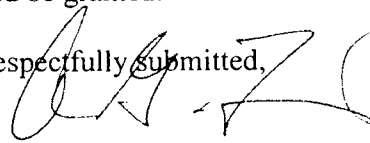
the Disputed Accounts can be resolved most efficiently, along with all other claims to the Disputed Accounts raised in JPMC's Adversary Proceeding.¹²

CONCLUSION

JPMC's motion to dismiss should be granted.

Dated: June 3, 2009
Wilmington, Delaware

Respectfully submitted,



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¹² In the alternative, this action should be stayed, as requested by the FDIC. (See Motion of Defendant JPMorgan Chase Bank, National Association for Stay of Debtors' Adversary Proceeding (D.I. 31).)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF DELAWARE

IN RE:)
)
) Bankruptcy Action
WASHINGTON MUTUAL, INC.,) Case No. 08-12229 (MFW)
et al.,)
) Chapter 11
Debtors,)

JPMORGAN CHASE BANK,)
NATIONAL ASSOCIATION,)
) Adv. Pro. No. 09-50551 (MFW)
Plaintiff,)
v.)

WASHINGTON MUTUAL, INC.)
AND WMI INVESTMENT CORP.,)
)
Defendant for all)
claims)

and)

FEDERAL DEPOSIT INSURANCE)
CORPORATION,)
)
Additional Defendant)
for Interpleader)
claim)

WASHINGTON MUTUAL, INC.,)
AND WMI INVESTMENT CORP.,) Adv. Proc. No. 09-50934
)
Plaintiffs,)
v.)

JPMORGAN CASH BANK,)
NATIONAL ASSOCIATION,) Wilmington, DE
) June 24, 2009
Defendant.) 10:38 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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1 (Call to the Order of the Court)

2 THE COURT: Good morning.

3 MR. ROSEN: Good morning, Your Honor, Brian Rosen,
4 Weil Gotshal & Manges, on behalf of Washington Mutual, Inc.

5 And, Your Honor, this is the monthly omnibus hearing.
6 Just quickly going through some matters on the agenda. As the
7 Court will note, item 1, which was the debtors' motion to take
8 certain actions in connection with a rabbi trust and
9 distribution of assets there has been adjourned to the next
10 omnibus hearing on July 27th.

11 The debtors do intend to file a response by July 22.
12 Do you want to take care of that first?

13 THE COURT: Yes. Could the parties on the phone
14 please mute their phones, so we don't listen to your background
15 noise?

16 MR. ROSEN: The next two items, Your Honor, items 2
17 and 3, the Court has already entered orders with respect to
18 those, granting the relief that was requested. And we've
19 reflected that on the agenda. That brings us, Your Honor, to
20 item 4, which is the --

21 THE COURT: Well let me suggest we go in a little
22 different order with respect to the adversary matters.

23 MR. ROSEN: Okay.

24 THE COURT: I think it's appropriate that I first
25 decide the FDIC motion to intervene, which is item 6.

1 I can then address items 4 and 7, which are the
2 motions to stay the action. Then I'll deal with the -- item
3 number 5, the motion for reconsideration. And, if necessary,
4 item 8, the motion to dismiss.

5 MR. ROSEN: Thank you, Your Honor.

6 THE COURT: Does that sound logical?

7 MR. ROSEN: That sounds fine to us, Your Honor. I'll
8 pass the podium to Mr. Califano.

9 THE COURT: All right.

10 MR. CALIFANO: Your Honor, I just want to make clear,
11 the FDIC is not seeking to interfere in the administration of
12 this case. We've sat by and we've played, what I believe to be
13 a minimal role in this case. But we do have the obligation to
14 uphold the statute and uphold Firrea.

15 And right now, the FDIC's rights, powers and duties
16 under Firrea are directly implicated by the adversary
17 proceedings before Your Honor, and we talk about the stay.

18 We can go through that. But with respect to
19 intervention in the turnover action, you remember the four
20 elements of intervention are timeliness, and Your Honor may
21 recall at the first status conference we brought up the fact
22 that we would intervene and seek a stay of both adversary
23 proceedings. Because we believe both adversary proceedings
24 were commenced in violation of Firrea's jurisdictional bar.

25 Where there's an interest, or property, or the

1 transactions underlying it, Your Honor, we, in our stay motion,
2 will show that the debtors, in their proof of claim in the
3 receivership, in their litigation in the District Court of
4 D.C., recognized the FDIC's interest, and that's why they
5 sought relief with respect to these very same deposits in that
6 litigation and in that proof of claim.

7 THE COURT: Well in that litigation and proof of
8 claim, weren't they seeking damages from the FDIC, to the
9 extent they don't get the deposit accounts? They weren't
10 asserting title to the deposit accounts.

11 MR. CALIFANO: I'll get you the exact language. Not
12 title, Your Honor, but the claim implicates the rights of the
13 FDIC. And if you look at what their proof of claim said about
14 the deposit:

15 "Claimants hereby assert a protective claim for the
16 outstanding balance on each of the accounts, in the event the
17 FDIC exercises any rights it may have under the purchase and
18 assumption agreement, or otherwise with respect to the
19 lawsuit."

20 Now when we get to the stay motion, Firrea has a
21 jurisdictional bar, not just against claims, but against claims
22 related to the actions of the FDIC as receiver. Now the
23 purchase and assumption agreement -- the entering into the
24 purchase and assumption agreement, the transactions thereunder,
25 that was the core of the FDIC's action as receiver in this

1 case.

2 So to the extent they're seeking a determination, or
3 they're seeking to impact the rights under the purchase and
4 assumption agreement, the FDIC's interests are directly
5 impacted by the turnover action.

6 The purchase and assumption agreement, Your Honor,
7 has provisions which gives the FDIC rights with respect to
8 deposits. And it also gives the FDIC the right to direct the
9 assuming bank to withhold deposits, pending any determination
10 of claims against those deposits and against the depositor.

11 THE COURT: What rights does it have with respect to
12 the deposit account?

13 MR. CALIFANO: Your Honor, with respect to the
14 deposit accounts, under the purchase and assumption agreement,
15 which was recognized by the debtors, which is why they recited
16 it in their proof of claim and in the District Court action,
17 the FDIC has the power with respect to the deposits, for
18 example, to direct the assuming bank, in this case JPMorgan
19 Chase, to withhold payments of that deposit until their
20 respective rights are determined. The turnover action --

21 THE COURT: All right. I'm going -- excuse me -- I'm
22 going to direct the operator to mute everybody on the line,
23 since they have not listened to my request. Is the operator
24 on?

25 OPERATOR: I am, Your Honor, and I'm muting the lines

1 now.

2 THE COURT: Thank you.

3 OPERATOR: You're welcome.

4 THE COURT: I'm sorry to interrupt.

5 MR. CALIFANO: Okay. That's fine, Your Honor. The
6 FDIC's rights directly are implicated by the proof of claim and
7 by the District of D.C. action. And the turnover --

8 THE COURT: Well what rights other than to direct JPM
9 to withhold payment until title is determined, what other
10 rights does the FDIC assert in the deposit account?

11 MR. CALIFANO: We've already asserted, Your Honor,
12 early on in this case in connection with the aborted
13 stipulation with JPMorgan Chase regarding deposits, we already
14 asserted, and the debtors are aware of it, potential setoff
15 rights.

16 The FDIC is doing its investigation. That
17 investigation has not been completed. We have filed a proof of
18 claim in this case. We have potential setoff rights that are
19 preserved by statute and by the purchase and assumption
20 agreement --

21 THE COURT: Well but --

22 MR. CALIFANO: -- in these deposits.

23 THE COURT: -- but your proof of claim did not assert
24 setoff rights, did it?

25 MR. CALIFANO: Yes, it did, Your Honor.

1 THE COURT: To the deposit accounts?

2 MR. CALIFANO: We preserved our setoff rights in the
3 proof of claim.

4 THE COURT: All right.

5 MR. CALIFANO: And in any event, Your Honor, in
6 addition to the direct interest in the deposits, because this
7 turnover action implicates Firrea and the FDIC's -- and
8 Firrea's bar of actions, the FDIC's interests, as an agency,
9 are directly implicated. And we've cited the cases and the
10 support for that.

11 The FDIC has the interest in protecting its governing
12 statute. The next element is where the disposition of the case
13 may effect that interest. Since the debtors are seeking a
14 determination that the deposits are indisputably theirs, and
15 that the deposits should be turned over, it directly implicates
16 the FDIC's potential interests in those deposits.

17 And finally, Your Honor, the question of inadequate
18 representation. Whether or not JPMorgan Chase would have an
19 interest in defending that turnover action, the FDIC has a
20 distinct interest, as is recognized under the purchase and
21 assumption agreement.

22 There is an interest that they have that's protected
23 in 9.5 to direct withholding of payments. Also JPMorgan Chase
24 is a private litigant, does not have the same interest in
25 upholding the provisions of Firrea and the agency's protections

1 thereunder.

2 So I think we've established all the elements, Your
3 Honor. As the debtors recognize, this is one of the principal
4 assets in a Chapter 11 case, which is also related to the
5 largest bank failure in U.S. history.

6 I find it difficult for them to argue that the FDIC
7 doesn't have a right to intervene, and doesn't have an interest
8 that needs to be protected.

9 THE COURT: Thank you.

10 MR. CARLINSKY: Good morning, Your Honor, Michael
11 Carlinsky from Quinn, Emanuel on behalf of the debtors. To
12 take up the issue which Your Honor has put first on the
13 calendar, which is the motion to intervene, some of what I'm
14 going to say will also be relevant when we address -- if we
15 address the issue of the motion to stay.

16 What the FDIC has said in its papers is its supposed
17 interest in these adversary proceedings, and in particular the
18 turnover action, is because the claim against JPMC violates the
19 jurisdictional bar of Firrea.

20 Your Honor, what's interesting is, in their opening
21 papers that was the FDIC's first argument. In their reply,
22 it's now moved to the second or third position. We think
23 because the FDIC, frankly, did not anticipate the Rosa
24 (phonetic) case, which is Third Circuit authority binding on
25 this Court, and which we respectfully submit really is the

1 answer to this case.

2 The Rosa case, and if I can, Your Honor, I brought
3 some boards along and I've given proofs to my friends.

4 The Rosa case, I think really these are the quotes
5 that the Court needs to focus on the Rosa case. But let me
6 describe what happened in Rosa, and I'll return to the podium.

7 THE COURT: Yes. So that your argument can be kept
8 as part of the record, and those on the phone can at least hear
9 you.

10 MR. CARLINSKY: Your Honor, in Rosa you had three
11 banks. Two that were in receivership and a third bank which
12 was not. The assets of the first bank in receivership went to
13 the second bank, as well as an assumption of liabilities.
14 Those assets and liabilities were then sent to a second bank,
15 which was in receivership. And then, ultimately, were assigned
16 to a third bank, which was not in receivership.

17 The argument before the Third Circuit, and first the
18 District Court, was, does the jurisdictional bar apply? And
19 what Rosa clearly does is it looks at 1821 13 d -- I always get
20 the numerals wrong -- but looks at the two provisions of the
21 jurisdictional bar and asks the question, to which institutions
22 does that jurisdictional bar apply?

23 And what the Third Circuit tells us clearly,
24 unequivocally, and we submit it really is case over on this
25 issue is, as to the two institutions in receivership, the bar

1 applies. But the Court draws a sharp distinction as to claims
2 against the institution not in receivership, the bar did not
3 apply.

4 And if I may come back now to the board, these are
5 the two quotes out of Rosa. The Court says:

6 "The language of the bar simply states that it
7 applies when there is an institution for which RTC has been
8 appointed receiver. Thus, the issue at bar is whether at the
9 time the case came before the District Court RTC has been
10 appointed receiver of the institutions."

11 And then the Court draws the distinction I was
12 alluding to.

13 "At the time the complaint was filed, the successor
14 bank, bank number 3, was in conservatorship, not receivership.
15 Thus the successor bank was not then a depository institution
16 for which the corporation has been appointed receiver."

17 The Court goes on, if there were any doubt in that
18 language, the Court said:

19 "We do not believe claims against the successor bank
20 fall under 1821(d)(13)(D)(1), because they seek neither payment
21 from nor determine a right with respect to the assets of the
22 depository institution for which RTC has been appointed
23 receiver. Nor does the second prong of the bar, bar these
24 claims. This is so because we construe the relating language
25 of that clause to refer to claims against the very institution

1 that are challenged, which must be an institution for which RTC
2 has been appointed receiver."

3 We have essentially the exact paradigm as in this
4 case. The third institution here is an assignee of assets. If
5 you trace the lineage of those assets, surely they go back to
6 an institution in receivership. But the fact that the
7 institution which is the assignee of the assets is not in
8 receivership, according to the Third Circuit says, no bar.

9 That's our situation here, Your Honor. What was
10 startling was, frankly, in their reply the FDIC ignores Rosa.
11 They say, Judge, you should look at this case called National
12 Union, which is subsequent from Rosa. And, Your Honor,
13 National Union, frankly, has nothing to do with the issue of
14 the jurisdictional bar as it applies in this case, or
15 potentially applies in this case.

16 But what's more, Judge, if there were any doubt as to
17 when the bar applies, when the bar doesn't apply, and the whole
18 purpose behind Firrea, the whole purpose that Mr. Califano
19 fails to really point out, would put before the Court -- let me
20 just go in order.

21 This is the New Rock Asset Partners case, a 1996
22 decision in which the issue here was whether Firrea applied, so
23 that the FDIC would have jurisdiction in Federal Court. And
24 the Court in this case says, Firrea was enacted to deal with a
25 banking crisis and to smooth the modalities by which

1 rehabilitation might be accomplished. In other words, the
2 congress wanted to have a fund so claims against the RTC or
3 that institution, direct claims that funneled through the
4 administrative process, and the Third Circuit says:

5 "It is clear to the Court that this policy is not
6 advanced in any significant way by retaining Federal
7 jurisdiction, once the failed bank's assets have been assigned
8 to a private company."

9 Here, Chase. We have the FDIC v. McFarlane case out
10 of the Fifth Circuit. Again, right on point, holding that the
11 bar doesn't apply "When the FDIC relinquishes ownership, the
12 procedures governing its role as a receiver no longer apply."

13 And we have the Henrich case out of the Ninth
14 Circuit. And I want to talk about the Henrich case, because,
15 again, let's just look at what the FDIC has previously told,
16 not this Court, with all due respect, the United States Supreme
17 Court. In its petition for certiorari in the Henrich's case,
18 and this is right out of their brief, Judge.

19 And what's interesting is, again, in their reply,
20 they treat it with the back of the hand footnote that says, oh,
21 ignore the Henrich case.

22 But this is what they told the U.S. Supreme Court.
23 In Henrich, in 2007.

24 "The jurisdictional bars through Firrea do not apply
25 to suits that are brought, not against the FDIC, but against an

1 assignee of an asset formerly held by the FDIC."

2 That is exactly our case. And they also added
3 "Section 1821(d)(13)(D) does not apply to claims that are not
4 susceptible to resolution through the administrative
5 procedure..." And I've highlighted the language. "...such as
6 claims against a private party who hold an asset that was once
7 held by an FDIC receivership. In that circumstance, there is
8 no administrative claims procedure to exhaust, because that
9 procedure governs only claims against the FDIC receivership.
10 Once the receivership transferred an asset to the third party,
11 the asset is no longer an asset of the depository institution
12 for which the corporation has been appointed receiver."

13 Those were the FDIC's words.

14 And not to overstate it, but the last point I would
15 make, Your Honor, is, if there was still even a shadow of a
16 doubt as to what Rosa stands for, here's the Third Circuit in a
17 case called Hudson United Bank, describing what their holding
18 was in Rosa, in plain and simple terms.

19 And Hudson is 43 F.3d 843. And at 848, the Third
20 Circuit says -- I'm sorry let me go back a page. This is
21 actually at -- yes, 848, footnote 10, the Court talks about
22 Rosa and says the following.

23 "Thus with respect to this two-part subdivision..."

24 Referring specifically to romanette i and ii.

25 "...we held (i) applied..."

1 Meaning romanette i.

2 "...applied only to claims against failed
3 institutions, while (ii) applied to claims against failed
4 institutions specified in (i), as well as to claims against the
5 receiver of such institutions."

6 The Court goes on to say:

7 "The jurisdictional bar of 1821(d)(13)(D) extends
8 explicitly to claims against the receiver, as well as to those
9 against the depository institution, and even concludes in its
10 opinion by once again giving a nice sound bite and says:

11 "A single claims procedure is more consistent with
12 our decision in Rosa, which held that claims against the
13 receiver, as well as claims against the failed institution,
14 were subject to the statutory exhaustion requirement of
15 administrative review."

16 Your Honor, we think the issue is clear as day. And
17 it is that jurisdictional bar which is the pretense for the
18 FDIC's motion to intervene. If they cannot satisfy that
19 element, we respectfully submit, they should not be allowed to
20 intervene into the turnover proceeding. They should not be
21 allowed to cause the additional delay that will invariably
22 result if we're now stayed in this Court and we have to proceed
23 in Washington, and we ultimately have months, and months, and
24 months of additional delay.

25 I'll hold my other remarks, if I may, until we get to

1 the stay motion, unless Your Honor has any questions.

2 THE COURT: No. But tell me more about the -- their
3 assertion that they otherwise have an interest in the adversary
4 through their proof of claim assertion.

5 MR. CARLINSKY: Well, I was looking at the proof of
6 claim assertion, and I may have to defer to Mr. Kirpalani on
7 that issue. But what I would say is this, Your Honor. They
8 have not taken any action. What they've told the Court, as I
9 heard Mr. Califano is, we have a right, we may have a right
10 that we want to assert. We may have a right to tell JPMC not
11 to pay this deposit. We have a right.

12 Well I think about it this way. Judge, there were
13 lots and lots of deposits that went from WMI to JPMC. Let's
14 assume my mom was a depositor, she goes to the ATM, she goes to
15 take out a hundred dollars from her account and it only gives
16 her eighty. She goes to Chase and says, you owe me \$20.

17 Is Mr. Califano seriously contending that, wait a
18 minute, we have a potential right to take back that account,
19 therefore, Mrs. Carlinsky -- oh, has a different last name than
20 me, but is it seriously contended she has to file a claim, a
21 proof of claim, go through the administrative process and
22 bring her suit in a D.C. Court?

23 I think all of these suggestions, well we might have
24 this claim to pull back the account. We have this proof of
25 claim where we've protected, we might have some claim of

1 setoff.

2 That's not the stated basis for which they asked to
3 intervene here, Judge. They said they needed to do so under
4 Firrea. That's the motion before the Court. And we suggest
5 that they're now just trying to dance around the fact that Rosa
6 stands in their way.

7 Now if I could just ask Mr. Kirpalani to address Your
8 Honor's specific question.

9 THE COURT: Thank you.

10 MR. KIRPALANI: Good morning, Your Honor. Susheel
11 Kirpalani from Quinn, Emanuel. Just in response to your
12 question about this Section 9.5, what I would call the yank a
13 deposit provision that the FDIC reserved its rights to do in
14 the purchase and assumption whole bank contract.

15 First of all, there's something that's being lost in
16 all of this. There's only one bank that was ever subject, even
17 just for a nanosecond to the FDIC's regulatory authority, and
18 that was Washington Mutual Bank, not the subsidiary bank
19 Washington Mutual FSB, which, frankly, and this is really
20 important, Your Honor, that's where 3.7 billion dollars is.

21 It's not at the entity that, even in their proof of
22 claim they say they would potentially have some sort of setoff
23 right relating to tax refunds.

24 It's important, Your Honor, also it's in the
25 magnitude. These tax refunds, for their setoff rights, is

1 about 240 million dollars, max, from what's there.

2 That's six percent of the deposits that's at issue,
3 and it's only against the entity that was once, for a
4 nanosecond, in receivership, not against the FSB bank, the
5 stock of which was acquired by JPMorgan Chase. So this yank a
6 (sic) deposit provision -- excuse me, the yank a deposit
7 provision doesn't even apply to deposits that were down below
8 at the FSB level.

9 And, secondly, Judge, and I'm sure this one's not
10 going to be surprising to you, you know, with all due respect
11 to the FDIC and their contract here, Section 9.5, I don't see
12 this as having, you know, a get out of jail free card with
13 respect to the automatic stay.

14 It would have to come here first. They would have to
15 come here and say we want a yank a deposit that's property of
16 the estate, and pull it back, and not let JPMorgan turn it over
17 to the estate. It would have to come here, and I believe the
18 FDIC has even admitted that to us, Your Honor, they would have
19 to come here and ask Your Honor to something.

20 MR. SACHS: Your Honor, Robert Sachs from Sullivan
21 and Cromwell representing JPMorgan Chase. We support the
22 FDIC's motion to intervene in the turnover action, and we also,
23 as Your Honor is aware, have filed a motion independently, in
24 case it's denied, to stay that action.

25 THE COURT: Yes.

1 MR. SACHS: And we filed this morning, though it's
2 not on for today, a motion to withdraw the reference in
3 connection with that action on the basis of the Firrea bar.
4 But I'd like to respond, perhaps from our perspective to --

5 THE COURT: Reference of which adversary, the
6 turnover, or both.

7 MR. SACHS: Both -- both adversaries, Your Honor, on
8 the basis that both are barred under Firrea, and involves
9 substantial questions of banking law that need to be resolved.

10 But I'd like to address the two questions you posed
11 to Mr. Califano, in the context of the issues that need to be
12 resolved in the turnover action, and why they implicate not
13 only the rights of the FDIC, but they squarely implicate the
14 rights of a determination of the assets of the institution in
15 receivership.

16 And under 1821(d)(13)(D)(1), there's been discussion
17 about claims, but there's not been a discussion about the other
18 part of subpart (1), which is that it applies to any action
19 seeking a determination of rights with respect to the assets of
20 any depositary institution for which the corporation has been
21 appointed a receiver.

22 Adjudication of the turnover action in this context
23 is going to require a determination and adjudication of those
24 rights. The debtors assert that these are deposit accounts.
25 But we have said they are not deposit accounts.

1 There are substantial issues as to whether these are
2 deposit accounts, whether the -- what the source of funds is in
3 those accounts, if they are deposit accounts, or if they're
4 not.

5 Whether the funds are capital contributions. Whether
6 in fact there are any funds, or whether this is simply a book
7 entry transfer offset by corresponding book entry transfers,
8 and whether there was any delivery of funds at all. All those
9 are going to be issues that need to be resolved as part of the
10 determination --

11 THE COURT: And how do they implicate the FDIC
12 interests?

13 MR. SACHS: Because they go to whether something is
14 or is not an asset, was or was not an asset of WMB at the time
15 of receivership.

16 If the debtors are correct that this was -- and I'll
17 explain why that then gets around to effecting the rights of
18 the FDIC, because the character of what these were or were not
19 will dramatically effect whether there are -- whether these are
20 -- let's assume for a minute, Your Honor, that these are not
21 deposit accounts, that we are correct that these were not
22 deposit accounts that were there.

23 The FDIC has the right, at that point in time, to
24 pull the money back, if they want to, potentially under the PNA
25 agreement.

1 In addition, it effects that rights of potential
2 purchasers -- I'm sorry, potential creditors of WMB, not WMI,
3 if in fact these were assets of WMB, not assets of WMB not
4 accounts that were at WMBFSB as the debtors claim.

5 THE COURT: Well let me ask a question, if it is
6 determined that they are not deposit accounts, did JPMC buy
7 them?

8 MR. SACHS: JPMC purchased all -- essentially all
9 assets. So depending on what they are, yes, they probably
10 purchased whatever they are. However, there are different
11 consequences that could flow from the determination as to what
12 they are. So let me give you a for example, Your Honor.

13 The 3.7 billion dollars that the debtors throw away
14 and say, oh, this is just the -- that's grandma's checking
15 account at WMBFSB. Well they're substantial issues. That's
16 not grandma's checking account.

17 This was something that they claimed to be a deposit
18 account that they, in the week leading up to receivership,
19 purported to create for the first time by book entry transfer
20 of funds that have to be done and corrected in three or four
21 different steps. Corresponding with an immediate offset of a
22 corresponding book entry transfer that immediately loaned the
23 supposed funds back to a different institution.

24 There's substantial issues as to what that is and
25 where those funds, if there are funds at all, are. If those

1 funds were the funds of -- the assets of WMB, as opposed to
2 assets at WMBF -- or a deposit account at WMBFSB, that could
3 have a significant impact on everyone's rights with respect to
4 that, including JPMorgan Chase. And one of the reasons that we
5 filed an interpleader claim is to be sure that nobody is
6 subjected to conflicting liabilities.

7 The FDIC is one such party. But going back to the
8 issue, why do they have -- this is an ongoing receivership by
9 the FDIC for this -- this is not like Rosa, something that was
10 in the past and was overdone. This is a case with an ongoing
11 receivership by the FDIC of this institution.

12 And any determination which was required for the
13 determination of the turnover action must determine whether
14 these were or were not assets of the institution. That's an
15 essential requirement of a determination of this.

16 It by definition has to implicate the FDIC's
17 interests, because that has to be determined to resolve this
18 claim.

19 But let me go on and readdress one other -- two other
20 issues. You asked, aren't they just asking for damages. Well
21 that's not what they asked for in the other action. If you in
22 fact look at the proof of claim that in fact they filed in the
23 administrative process, and, Your Honor, I should step back a
24 second. We have an active, ongoing administrative process
25 going on here.

1 They're coming to you and asking, Your Honor, we want
2 these "deposit" accounts. Well they're already raised an issue
3 administratively for the deposit accounts and they've
4 challenged that in the DC action. At this point in time, their
5 claim to those deposit accounts has been disallowed. They have
6 no claim for those deposit accounts, unless and until they get
7 the determination of the FDIC overruled in the District Court
8 in D.C. Because otherwise you would be saying the provisions
9 of Firrea have no impact whatsoever.

10 They went and claimed these deposit accounts as
11 theirs. They did file a proof of claim, and it was disallowed.

12 Now I'm not telling you they may not succeed in the
13 D.C. action. But you can't independently circumvent that
14 action in order to separately adjudicate that. But look at
15 their claim. If you look at their proof of claim, which has
16 been submitted to Your Honor, under the deposit claims they
17 specifically say, they recite the conflicting issues and they
18 say --

19 THE COURT: Give me a cite. And is this attached to
20 your --

21 MR. SACHS: Well let me tell you where these
22 different things are. They're in different places, Your Honor.
23 The proof of claim at one place is exhibit 4 to the FDIC's
24 motion

25 THE COURT: I have it.

1 MR. SACHS: And the D.C. complaint is exhibit 1 to
2 the FDIC's motion.

3 THE COURT: Okay.

4 MR. SACHS: And, in fact, the D.C. complaint largely
5 cribs the administrative claim. But what they seek -- they do
6 seek damages as an alternative relief. But what they seek is
7 to have their claims re-adjudicated in that Court. And if you
8 look at their claims, and I'm reading now, the deposit account
9 portion of it is paragraph 43 through 46.

10 And it talks in there about, and let me just find it.

11 "Without prejudice to WMI's position that it is a
12 depositor..."

13 THE COURT: Where are you reading --

14 MR. SACHS: I'm sorry, I'm reading at paragraph 45,
15 Your Honor.

16 THE COURT: Okay.

17 MR. SACHS: Of -- and, again, this is paragraph 45 of
18 the proof of claim.

19 THE COURT: I have it.

20 MR. SACHS: (Reading)

21 "Without prejudice to WMI'S position that it is a
22 depositor of JPMorgan Chase, claimants hereby assert a
23 protective claim for the outstanding balance on each of the
24 debtor deposit accounts."

25 And then it goes on from there.

1 So they are asserting a claim to ownership of the
2 deposit accounts in the administrative proceeding. That claim
3 then was disallowed. And that's what they're claiming in the
4 turnover action, we own the funds in the depositor accounts.

5 But it's alleged deposit accounts. That claim was
6 disallowed. In the D.C. action, which is exhibit 1 to the
7 FDIC's motion. They seek a de novo determination of the
8 disallowance of that claim. And, alternatively, that's Count
9 1, and alternatively in Count 5 they seek to require the FDIC
10 to redetermine their claims.

11 That's Count 5. And so to say that they were seeking
12 in the D.C. action and through the claims process solely
13 damages against the FDIC, is a mis-characterization of the
14 scope of what they are asking for.

15 THE COURT: Well, wait a minute, I'm looking at Count
16 5, and it seems to deal with the tax refunds. Am I at the
17 wrong exhibit? I'm sorry, I'm on exhibit 2. Sorry.

18 MR. SACHS: Count 5 declaration that the FDIC
19 receivers disallowance is void. Sorry, it's page 27 --

20 THE COURT: I have it. All right.

21 MR. SACHS: Again, if Count 1 and Count 5, Count 5
22 the end says:

23 "Therefore, the FDIC receivers disallowance should be
24 declared void, and the FDI receiver should be required to
25 reconsider plaintiffs proof of claims."

1 And, again, the proof of claim raises directly the
2 issue of, is this a deposit account, who owns it, if it is,
3 etcetera.

4 All of those issues are common to the two proceeding.
5 When we get to the issue of the bar and the stay, we can
6 address that more fully. But in terms of looking at whether
7 the FDIC has an interest as these things, it directly is
8 implicated, because the turnover action rests fundamentally
9 upon a determination of what this is, and that it belongs to
10 the debtors in this case.

11 And that directly impacts what is already at issue in
12 the proof of claim process, both administratively and in D.C.
13 For that reason it implicates the bar, but in terms of
14 commonality and interest it directly relates to that issue, as
15 well.

16 And I think on this motion, I'll sit down and let Mr.
17 Califano speak further. Unless you have any further questions
18 for me.

19 THE COURT: No more.

20 MR. CALIFANO: Your Honor, if I may. I, you know, I
21 argued intervention, Mr. Carlinsky argued stay. I still
22 haven't even gotten a chance to argue my stay motion.

23 THE COURT: Yes --

24 MR. CALIFANO: There are a number of things that he
25 had said that are just plain wrong. And I'd like to address

1 it, but I don't know if you want to address it in the
2 context --

3 THE COURT: I want to deal only with the motion to
4 intervene first. Okay. Are you done --

5 MR. CARLINSKY: I was going to ask Your Honor if I
6 can respond to the remarks that we've just heard, very, very
7 briefly. There are three points that I'd just like to point
8 Your Honor to.

9 THE COURT: Yes.

10 MR. CARLINSKY: Thank you, Your Honor. First of all,
11 I think as Your Honor can appreciate, and as the FDIC itself in
12 its brief at page 3, it's opening brief, admitted, the D.C.
13 action was filed by the debtors because it was required to.

14 In fact the FDIC's exact words were:

15 "as they were required to do under Federal law." We
16 filed that action because the proofs of claim were disallowed.
17 Had we not filed that action, we would have run the risk of
18 forfeiting claims and been prejudiced. Why did we file that
19 action, Your Honor? Because the FDIC in its disallowance
20 letter, inciting among the reasons why it disallowed the
21 claims, it said, you're suing the wrong party.

22 It's a third party you need to sue, i.e. JPMC. This
23 is the FDIC's notice of disallowance January 23rd, 2009. And
24 it says, "The receiver has determined to disallow your claim
25 for the following reasons."

1 And among it is, "They appear to assert claims
2 against a third party."

3 THE COURT: Well that's only one of the reasons
4 cited.

5 MR. CARLINSKY: Well -- yes, it is. But the only
6 third party that we could think of that they were referring to
7 here is JPMC.

8 THE COURT: Well, I mean, they disallow it for other
9 reasons.

10 MR. CARLINSKY: Yes. And I recognize this is
11 probably something called boilerplate. But so the claim is
12 disallowed, we filed the D.C. action to preserve our rights.
13 And, in fact, it was a place holder. It was a place holder
14 filed by us. We turned to the FDIC and we basically said, take
15 as long as you want, six months, whatever you need, we really
16 weren't planning on moving forward.

17 This is the Court of exclusive jurisdiction. This is
18 where we sought to proceed. And then, the other point I would
19 make that Mr. Sachs highlighted for the Court, but just so it's
20 not lost, in the proof of claim, we couldn't be more clear. We
21 said, and this is at paragraph 45 that was read to the Court.

22 "Without prejudice to WMI's position that it is a
23 depositor of JPMorgan Chase, claimants hereby assert a
24 protective claim."

25 A protective claim. We did what we had to do

1 responsibly as fiduciaries.

2 Now we're somehow being told, you have to proceed in
3 that Court and will be penalized for having filed in that
4 Court. And the last thing I would remark on, Judge, is what we
5 heard from JPMC's counsel right now is a preview --

6 THE COURT: I'm not hearing the -- I'm hearing the
7 intervention. Okay.

8 MR. CARLINSKY: I'll sit down.

9 THE COURT: Does the FDIC want to respond on --

10 MR. CALIFANO: Yes. Your Honor, I think Mr.
11 Carlinsky just made my case. I mean, just like the FDIC
12 doesn't want to interfere in the administration of this
13 bankruptcy case, this is not the place for it to be determined,
14 with all due respect, as to whether the FDIC's disallowance of
15 the claim was proper.

16 Yes, we said they had to file a claim. They had to,
17 under Federal law. They had to file a lawsuit, after the
18 disallowance, they had two place where they could file it
19 properly.

20 One is the District of D.C., one was the District of
21 Washington. That is the law, Your Honor. It's not -- we're
22 not trying to trap them. It's the law. It's Firrea. There is
23 subject matter jurisdiction limitations. Whatever reservation
24 of rights they put in their proof of claim, that doesn't
25 matter, Your Honor.

1 This goes to subject matter jurisdiction. They are
2 trying to implicate the determination that the FDIC made,
3 they're trying to implicate the purchase and assumption
4 agreement.

5 They're not prejudiced. This isn't a due process
6 issue. They have a forum for this to be determined. They
7 recognized that they had a forum. It's the District of D.C.
8 And in that District of D.C. complaint with respect to the
9 deposit, and this is as I -- as Mr. Sachs said, exhibit 1 to
10 our complaint. And at paragraphs 47 through 50, there are
11 allegations regarding the deposit, and the allegations with
12 respect to the deposit reference at paragraph 48 the purchase
13 and assumption agreement and the transfer. Your Honor, this is
14 -- the deposits are at issue.

15 We've talked about the 9.5 rights. And what Mr.
16 Kirpalani said about the 9.5 rights and FSB, this is the
17 ultimate issue. But I don't want to get into the ultimate
18 issue. But as we put with our reply, Your Honor, it's attached
19 to our reply as the debtors own submission, which shows, not
20 240 million in tax related payments, but 3 billion. And one
21 other fact, Your Honor, that should probably weigh in whether
22 we have an interest in these deposits, regardless of whether
23 they're nominally at FSB or WMB, that transfer from WMB to FSB
24 allegedly happened three days before the receivership.

25 And we're not even sure whether it happened. Okay?

1 That's a fact that will be determined. Where that fact will be
2 determined or should be determined is the District of Columbia
3 District Court. That's the statutory scheme, Your Honor.

4 I will address the cases in connection with the
5 motion for a stay. But I do want to say, Mr. Carlinsky said we
6 changed our argument because we missed the Rosa case.

7 Our opening brief, at page 7, cites the Rosa case.

8 THE COURT: All right. We're getting far afield from
9 the motion to intervene, aren't we?

10 MR. CALIFANO: Yes, Your Honor.

11 THE COURT: All right. Let me just say with respect
12 to the motion to intervene, the parties really went afield.
13 But the standards, as I understand it, for mandatory
14 intervention are whether the motion was timely, whether the
15 movant has an interest in the adversary, whether the
16 disposition of the adversary may impair the movant's ability to
17 protect that interest, and whether its interests are adequately
18 protected by others already in the action. I find that is
19 timely.

20 It was filed shortly after the adversary was. The
21 parties were put on notice that the motion would be filed. The
22 question of whether or not the FDIC has an interest in the
23 adversary, I think is close one. This is an adversary dealing
24 with ownership of property claimed to be property of the
25 estate. Which is not in the possession of the FDIC, but is in

1 the possession of an assignee of the FDIC.

2 Nonetheless, the FDIC asserts that its interest is in
3 protecting the jurisdictional reach of Firrea, it is a
4 Government agency that is governed by Firrea. I think really
5 the -- there is enough to state that it has an interest
6 generally in the proceeding.

7 Its interest in protecting Firrea -- the reach of
8 Firrea may not be adequately protected by JPMorgan, which is a
9 private party and has interests of its own.

10 And even though JPM is adequately and vigorously
11 defending this action, I think that there may be a question of
12 whether or not JPM's private interests would extend to
13 protecting the public interest issues that the FDIC seeks to
14 protect.

15 So I will grant -- find that mandatory intervention
16 is applicable and will grant the motion. Alternatively, it was
17 argued, although not today, but in the pleadings, that
18 permissive intervention may be appropriate because the FDIC has
19 a claim which shares a common fact or law question with this
20 action. It is a Government agency and the action does
21 implicate a statute it is administering and whether
22 intervention will delay the action.

23 I think permissive intervention clearly is found here
24 for the reasons stated above. So I will grant the motion to
25 intervene for the sole purpose of prosecuting the action for a

1 stay of the turnover proceeding. And I think that's how the
2 FDIC limited it. Have the parties finished their arguments for
3 the motion for stay, or is there more?

4 MR. CALIFANO: Your Honor, I -- it's my motion, I
5 didn't get a chance to argue it so --

6 THE COURT: I understand.

7 MR. CALIFANO: So if you don't mind.

8 THE COURT: You may.

9 MR. CALIFANO: Thank you, Your Honor. Your Honor, as
10 we all know, on September 25th the Office of Thrift Supervision
11 closed WMB and appointed the FDIC as receiver.

12 Almost immediately thereafter, the FDIC entered into
13 the purchase and assumption agreement with JPMorgan Chase.
14 Under which, JPMorgan Chase purchased substantially all of
15 WMB's assets and assumed most liabilities. Everything, I
16 submit Your Honor, in these two adversary proceedings relates
17 to that transaction.

18 The procedural history here, Your Honor, is that on
19 December 30th, the debtor filed a proof of claim in the
20 receivership that is still pending. The receivership's
21 pending, not the proof of claim. And we talked about that and
22 in connection with the turnover action.

23 But, Your Honor, the proof of claim not only
24 addressed the turnover action and the deposits, it related to
25 everything which is part of WMB's proofs of claim.

1 There was the inter company loans, the inter company
2 receivables, the tax claim, the capital contribution claim, the
3 trust preferred claim, the preference claim, the allegation
4 that the sale itself was improper. The deposit claim we talked
5 about. And the employer -- employee/employer related costs and
6 insurance claims.

7 Thereafter, on January 23rd, and we talked about that
8 also, the FDIC disallowed that claim. And whether that's
9 boilerplate or not, or whether there's a meaning in that,
10 hopefully, that will be decided by the District Court.

11 On March 20th, as the debtors were required under
12 Firrea, and, you know, it's -- when Mr. Carlinsky talked, and I
13 don't want to talk about his mother, when he talked about his
14 mother's \$20 claim.

15 Well, first of all, if the FDIC had a claim against
16 Mrs. Carlinsky, or whatever your mom's name is, then she would
17 have had to file a proof of -- then she would have been subject
18 to the deposit claim.

19 THE COURT: Now if you had a claim against her, or if
20 she had a claim against you?

21 MR. CALIFANO: No, he's talking about the 9.5, then
22 she would have been subject to 9.5.

23 THE COURT: If she had a claim against you?

24 MR. CALIFANO: No if the FDIC -- he walked through
25 the deposit definition in 9.5, then she would of been subject

1 to it, as ridiculous as that -- as his example is. But, Your
2 Honor, the debtors filed the proof of claim, they complied with
3 Firrea. They filed the proof of claim, and then they filed the
4 litigation that they needed to, to contest that disallowance
5 for the proof of claim.

6 In that District Court action they asserted the
7 capital contribution claim, the trust preferred securities
8 claim, the taxes, the dissipation of WMB's asset, the deposit
9 claims, inter company loans, inter company receivables, and
10 improper asset sales.

11 Thereafter, JPMorgan Chase filed an adversary
12 proceeding. And I don't think they should have filed that
13 adversary proceeding here. That's why we're seeking to stay
14 that.

15 In that case, they asserted entitlement to the trust
16 referred part of our sale. The tax attributes deposit
17 accounts, goodwill litigation, various other assets.

18 THE COURT: Well let me ask you a question. Do you
19 think that JPMC could have filed a claim against the FDIC for
20 the assets that it alleges it bought from you?

21 MR. CALIFANO: Well it filed -- it filed the claim
22 against WMI. Could they have intervened in the District Court
23 action which is pending? They did intervene -- I'm sorry, they
24 did intervene, Your Honor. They have sought to intervene in
25 that pending action.

1 THE COURT: But in the absence of that, did they need
2 to, if the debtor had not filed a claim with the FDIC but
3 simply filed this turnover action here, would JPM -- and an
4 action or its counterclaim against all the other assets, would
5 JPMC have had to filed a claim in the first instance to the
6 administrative process against the FDIC?

7 MR. CALIFANO: No, Your Honor, because there isn't an
8 issue. Do they have a potential indemnification claim under
9 the purchase and assumption agreement? Yes, they have a
10 potential indemnification claim that's under the purchase and
11 assumption agreement.

12 Because they recognize, or at least I believe because
13 they recognized, that the transaction was at issue, the very
14 transaction was at issue, they sought intervention in District
15 Court action. That's pending.

16 So on April 27th, debtors filed the turnover action,
17 relates the deposits. We've talked about how the deposits were
18 implicated in the proof of claim and in the District Court
19 action. Then they filed counterclaims in the JPMorgan Chase
20 action, which seek avoidance recovery of the capital
21 contributions, we've heard that before.

22 The trust preferred securities, once again. The
23 preferential transfers. They seek to avoid the PNA transaction
24 entirely, which is something they sought to do in the proof of
25 claim and the District Court action. And they seek relief

1 against JPMorgan Chase, including the inter company loans,
2 which were subject of the proof of claim and the District Court
3 action. So as I said, Your Honor, their own submissions show
4 this all relates to the purchase and assumption transaction.

5 The statute that's implicated, Your Honor, is 12
6 U.S.C. 1821. And I have the same problem as Mr. Carlinsky, I
7 can't find the jump. But I believe it's (d)(13)(D). And that
8 provides:

9 "Except as otherwise provided in the subsection, no
10 Court shall have jurisdiction over any claim or action for
11 payment from, or any action seeking a determination of rights
12 with respect to, the assets of any depository institution for
13 which the corporation has been appointed receiver.

14 "Including assets which the corporation may require
15 from itself as such receiver. Or any claim relating to any act
16 or omission of such institution or the corporation as
17 receiver."

18 So, Your Honor, clearly we're talking about a dispute
19 over assets which JPMorgan Chase believes were purchased under
20 the purchase and assumption agreement. And an attack on
21 actions that were taken by the FDIC in its role as receiver.

22 THE COURT: Well let's first focus on jurisdiction
23 over property in the FDIC receivership. The property is no
24 longer there. And do you not agree that the courts have held
25 that once the property leaves the receivership and is assigned

1 to a third party, the Firrea jurisdictional bar no longer
2 applies.

3 MR. CALIFANO: Your Honor, the cases that were cited
4 by Mr. Carlinsky say something like what he's arguing, but they
5 don't say what he's arguing.

6 And if you look at the cases that they rely on, and
7 if you look at the decisions in National Union and Village of
8 Oakwood, the jurisdictional bar is not that narrow, Your Honor.

9 Heinrich's was a case where a private party purchased
10 a note. It was a quiet title action afterwards. And that
11 private party sought to assert the Firrea bar.

12 That doesn't apply to an attack on a transaction.
13 And that's what we have here, Your Honor. And it's not even
14 that you have to read between the lines. In the proof of claim
15 in the District of D.C. action, they attacked the transfer, the
16 very transfer of the assets.

17 That is a claim relating to an act or omission of
18 such institution where the corporation is receiver. And
19 they're not just seeking damage --

20 THE COURT: Well I think their action is against
21 JPMC, and their action asserts that it was the actions of JPMC,
22 not the FDIC, that caused their harm. Not a claim against the
23 FDIC.

24 MR. CALIFANO: In their counterclaims they are. But
25 they made the very same claim against the FDIC --

1 THE COURT: In the D.C action.

2 MR. CALIFANO: In the D.C. action.

3 THE COURT: Well that claim is not before me.

4 MR. CALIFANO: Your Honor, but the claim that is
5 before you --

6 THE COURT: Yes.

7 MR. CALIFANO: -- is potentially inconsistent, and it
8 relates to the actions and it's -- they're asking you to make a
9 determination as to the actions of the FDIC.

10 THE COURT: No, they're asking me to make a
11 determination as to the actions of JPMC.

12 MR. CALIFANO: Your Honor, you can't -- you can't
13 separate the two. You can't bifurcate the two. Because if the
14 transaction was a fraudulent transfer, as they're alleging,
15 okay, then the FDIC was party to that fraudulent transfer,
16 which is why they made the claims in the District Court action.

17 It goes to the actions that the FDIC took. It goes
18 to the transfers that the FDIC took. It has an impact on the
19 FDIC through the indemnification claim, Your Honor. And we
20 have the very same -- not just the very same facts, not just
21 the same facts, we have these same facts and the same legal
22 theories being asserted by the debtor here, and by the debtor
23 in the district Court action.

24 THE COURT: But it's against two different parties.

25 MR. CALIFANO: It is against two different parties,

1 Your Honor. But that's not, you know, as we've cited in the
2 cases, that's not dispositive of the issue of the First Filed
3 Rule, Your Honor.

4 But --

5 THE COURT: Well are we on the First Filed Rule?

6 MR. CALIFANO: No, I'm just saying --

7 THE COURT: Or Firrea bar --

8 MR. CALIFANO: But I'm just talking about, they still
9 are -- they still implicate the actions. It doesn't have to
10 be. Our reading of the statute in Village of Oakwood Homes
11 which we cited, a Sixth Circuit case, which came out after Rosa
12 doesn't require that the FDIC be a defendant.

13 In Village of Oakwood Homes we have the -- almost the
14 very same facts that we have here where a claim was asserted
15 against an assuming bank. That implicates the actions of the
16 FDIC, Your Honor. And it implicates, in our case, our
17 potential indemnification claim.

18 It's not remote. They're asking this Court to rule
19 on, with JPMorgan Chase as the nominal defendant, the very same
20 facts and claims they're seeking to assert in the District
21 Court action against the FDIC.

22 This, you know, it's not as limited as Mr. Carlinsky
23 said. The statute does not limit itself to claims against the
24 receiver. It limits -- it covers claims related to any act or
25 omission of such institution, or the corporation as receiver.

1 And I think this issue is put to bed in Village of
2 Oakwood Homes which is a recent Sixth Circuit decision. This
3 is not a remote -- you have to remember the cases that the
4 debtors are citing, there's a remote connection between the
5 cause of action against the non-debtor party or the assuming
6 bank, and the actions of the FDIC.

7 What is being faced here, Your Honor, and the
8 implication, not just in this case, but the implications with
9 respect to the actions of the FDIC, are very broad and very
10 far-reaching. And the prejudice to the debtor is minimal here,
11 Your Honor. They're not being denied their day in Court.
12 They're being -- what we're asking is that they litigate these
13 issues in the District Court, as opposed to litigating these
14 issues here. Which is what Firrea says it must do.

15 Now --

16 THE COURT: Well talk about the deposit accounts.
17 Are you suggesting that Firrea bars any action by any customer
18 regarding a deposit account?

19 MR. CALIFANO: No, Your Honor. But what Firrea --

20 THE COURT: Why here?

21 MR. CALIFANO: It doesn't bar it here. It bars it in
22 the Bankruptcy Court here. What -- they've already made the
23 claim in the District Court, they don't lose their claim to the
24 deposits if you stay the turnover action.

25 They've asserted the claim --

1 THE COURT: But is that true under Firrea, or are you
2 now on the First Filed Rule?

3 MR. CALIFANO: No, it's both, Your Honor.

4 THE COURT: How -- how does Firrea --

5 MR. CALIFANO: I already -- okay, well the connection
6 with Firrea, as the debtors have recognized, in the allegations
7 from the complaint that I read to the Court.

8 They recognized the FDIC asserts an interest in those
9 deposits. The FDIC's interest -- potential interest in those
10 deposits, which will be an ultimate issue to determined at some
11 point, relates to its role as receiver.

12 There was a reservation, a carve-out from the
13 deposits language, of funds owed to a party who has obligations
14 to the FDIC. That's in the purchase and assumption agreement.

15 We've asserted a proof of claim here. They are
16 potentially liable to us. Potentially, we have an interest in
17 those deposits in our role as receiver. Under Section 9.5, we
18 have the right to direct JPMorgan Chase, and whether the stay
19 applies or not, we could be in here, Your Honor, fighting the
20 stay on that. I want the Court to recognize, we have that 9.5
21 right.

22 We have not asserted that 9.5 right. Because we do
23 not want to interfere with the administration of this
24 bankruptcy case. Btu there are claims that are to be
25 administered in the receivership, and to be administered under

1 Firrea.

2 They made a claim in the receivership to those
3 deposits. We disallowed it. That's being litigated in the
4 District Court. The deposits are an asset which the FDIC and
5 the debtors recognize, there's no issue, they acknowledge we
6 have asserted an interest in those deposits. That will be -- I
7 don't want to go into the ultimate issues and the base for
8 that. Mr. Kirpalani did, I think he was -- I just -- I think
9 he wasn't on all fours with the facts, we could fight about
10 that some other time.

11 But the deposits are at issue in our receivership,
12 Your Honor. They clearly are at issue. Made the proof of
13 claim, we denied it, they filed the District Court action.

14 THE COURT: But are they at issue only because you
15 assert setoff rights?

16 MR. CALIFANO: No. They're at issue because they
17 asserted a right to them and we denied that right. So the --

18 THE COURT: But --

19 MR. CALIFANO: It's not just --

20 THE COURT: Okay. I understand.

21 MR. CALIFANO: You understand what I'm saying? It's
22 administering a claim. They asserted a right, we disallowed
23 it, they filed the District Court action. That's the FDIC's
24 claim process, that's what Firrea provides. And they -- and I
25 want to make clear, the prejudice to them is minimal, Your

1 Honor.

2 Nobody is saying that the FDIC has the absolute right
3 there's no -- it's not subject to judicial review. There is no
4 due process argument here. Firrea, though, provide -- and in
5 National Union the due process argument is dealt with under the
6 facts, and in National Union they rejected the Rosa -- the very
7 Rosa interpretation, and without belaboring it, it's in our
8 reply brief. The very Rosa interpretation that the debtors are
9 putting forth, that was rejected by the Third Circuit
10 subsequently in National Union.

11 The Village of Oakwood case, that determined the
12 issue as to whether the FDIC needs to be a defendant. But,
13 Your Honor, we need to keep in mind there is a statutory
14 scheme. The statutory scheme requires in the receivership to
15 file a proof of claim.

16 The FDIC can allow it or disallow it. The District
17 Court ,if it is disallowed, the claimant has the right to seek
18 de novo review. Okay. So it's de novo review of the
19 disallowance and of the claims which underlie it.

20 They have taken advantage of that right. That case
21 is pending in the District Court. They are not being denied
22 their day in Court, Your Honor. What we have here is the
23 debtor not being happy with Firrea, not being happy with the
24 way it works. Saying, I know I'm in the District Court, I know
25 I have to be in the District Court, but I really don't want to

1 be in the District Court, I want to file a turnover action. I
2 want to file a turnover action against another defendant, and
3 then that may or may not moot the District Court action.

4 What that would require, Your Honor, that if their
5 turnover action goes forward on these sort of terms, that's
6 going to require the FDIC now to make a lift stay motion and
7 start fighting over the very thing that Mr. Rosen talked about.
8 We don't want to do that.

9 We haven't done it for months. We came in here and
10 the very first appearance, when the JPMorgan Chase stip was on,
11 and we said, we're fine with the deposits going, as long as our
12 rights are preserved, we don't want to interfere.

13 That fell by the wayside for reasons that are not,
14 you know, not clear to us, but it's not our issue. But, Your
15 Honor, we are here to protect our statutory framework. And
16 Firrea provides for a claims process. They may not like the
17 claims process, but, you know, what they're -- they have to go
18 to their congressman, it's not here.

19 There is a claims process, they've recognized the
20 claims process, they've made the very same claims. And it's
21 every claim in the counterclaims, it's the deposits claim and
22 the turnover, they've made those claims here. We're not
23 seeking dismissal.

24 Your Honor, what we are are seeking is that this
25 litigation, which shouldn't be here, is stayed while we

1 determine what happens in the District Court litigation.

2 There's no prejudice to them. And also, Your Honor,
3 there's, you know, the only Court that can really adjudicate
4 the interests of all the parties here, is the District Court of
5 the District of Columbia.

6 The FDIC is a defendant in that litigation. We're
7 part of that litigation, we're litigating it with the debtors.
8 All right? JPMorgan Chase has sought to intervene. We don't
9 know whether that intervention will be granted or not. But if
10 Your Honor was concerned about that intervention, you could
11 transfer these actions to the District of Columbia.

12 The fact that -- there is some very significant
13 policy concerns here, Your Honor. And it's not just Firrea.
14 And it's not just the fact that we could have inconsistent
15 rulings here, Your Honor. We have a debtor who's not happy
16 with Firrea, follows Firrea and then tries to find another back
17 door avenue. We have a place for this litigation to be
18 determined. We have a place where all the parties could be
19 present.

20 And that's where these issues need to be determined.
21 We cannot have two separate courts dealing with the very same
22 operative facts and the very same legal theories where one --
23 you know, without all the parties. It just doesn't make sense.
24 And talk about effective administration of the estate, I can't
25 see how the estate is better administered by having a lawsuit

1 proceed with estate assets, where the Court really can't grant
2 compete relief.

3 Because not all the parties would be before Your Honor.
4 And where it's fatally flawed on a subject matter jurisdiction
5 basis, and I go back to this is subject matter jurisdiction.
6 The parties can't waive it, the parties can't consent to it.
7 Firrea is jurisdictional Your Honor. What I'm asking, give
8 them their day in Court. But their day in Court is not here,
9 their day of Court is in the District of Columbia.

10 Thank you.

11 THE COURT: Thank you. Yes.

12 MR. SACHS: Again, Your Honor, Robert Sachs on behalf
13 of JPMorgan Chase. Let me start -- I'd like to address both
14 the jurisdictional issue and the first filed issue, as well,
15 and the principals there. But let me start with, again, a
16 question that you asked, because I think -- I think the premise
17 of your question was incorrect. And your question was, isn't
18 the action here different from -- the claim against JPMorgan
19 Chase different than the claim against the FDIC, because the
20 claim here is based upon JPMorgan Chase's conduct, not based
21 upon the conduct of the receiver.

22 And the answer is no. The claim here against
23 JPMorgan Chase, in substantial part, is not based upon JPMorgan
24 Chase's conduct at all, other than that it is asserting that it
25 is the owner of property.

1 The issue is identical in both cases. The issue is,
2 was this property of WMB, the bank for which the FDIC is
3 receiver, or was this property at the time of receivership of
4 the holding company?

5 The claims here asserted by WMI, the debtors, are
6 that it was their property. The claims that are being asserted
7 by JPMorgan Chase, and perhaps the FDIC as to certain issues,
8 is, no, this was the bank's property. If that issue needs to
9 be resolved in order -- it is the dispositive issue in all of
10 the claims, whether asserted against JPMorgan Chase, or whether
11 asserted against the FDIC in the claims process and the
12 receivership.

13 If the property is determined to have been not the
14 property of the bank, then it's arguably the property of the
15 debtors.

16 If it's determined to have been the property of the
17 bank, which is the current state of affairs at the moment given
18 the disallowance of the claim, then it is not property in which
19 the debtors have any interest and it is the property we allege
20 of JPMorgan Chase. So that is at the core, it is a common
21 issue at the core, it is the dispositive issue at the core of
22 both sets of claims.

23 THE COURT: Well if you put it that way, then don't I
24 have exclusive jurisdiction to determine what is property of
25 the estate?

1 MR. SACHS: No, Your Honor. In fact, it's been
2 determined and I'd refer -- it's addressed here, as well, the
3 Amsave (phonetic) case addresses it directly. It's cited in
4 the brief. That is the issue under -- Firrea, there is general
5 bankruptcy exclusive jurisdiction, Firrea is a later enacted
6 statute that gives specific authority and exclusive authority
7 for determining what is the property of -- again, looking again
8 at 1821(d)(13)(D), it gives exclusive jurisdiction, again, a
9 later enacted statute, very specific, enacted with the backdrop
10 of bankruptcy in mind, it gives exclusive jurisdiction to the
11 FDIC, the receiver, followed by a claims process that limits
12 you to two courts, District of D.C., or the home Court for the
13 institution, for any action, and then we've talked about 1 and
14 2.

15 And that includes any action seeking a determination
16 of rights with respect to the assets of any depository
17 institution, i.e. with respect to the rights with respect to
18 the assets of WMB and --

19 THE COURT: That is in receivership.

20 MR. SACHS: It is in receivership. But it is right
21 now.

22 THE COURT: The assets are.

23 MR. SACHS: No, no, no. Let's read what it says,
24 Your Honor, because that's not correct. And, again, that's
25 been -- there is a receivership -- let's be clear here, there

1 is a receivership, it is pending. So WMB is in receivership.
2 Each claim asserted by the debtors, whether asserted against
3 JPMorgan Chase, or against WMB, the receiver, is dependent upon
4 a determination as to whether a particular asset, let's use the
5 deposit account since -- the accounts that they claim are
6 deposit accounts.

7 There's a substantial question as to whether if these
8 are deposited accounts and if there are funds in those
9 accounts, whether those funds were in fact the property of the
10 debtors, i.e., the holding company parent, or the property of
11 the bank. For example, are they tax funds in those accounts
12 that belong to the bank.

13 That is a determination that must be made under
14 Firrea, given both the pendency of the receivership, and, I
15 would suggest, Oakwood as well, Your Honor, which I'll address
16 in a moment specifically, because it is an action seeking a
17 determination of rights with respect to assets of any
18 depository institution.

19 THE COURT: Well you're suggesting that so long as it
20 involves an asset that was owned by a depository institution
21 that is in receivership, jurisdiction lasts forever. But
22 wouldn't that make the last clause of the first paragraph
23 superfluous? Because it says, "including assets which the
24 corporation, the FDIC, may acquire from itself as such
25 receiver."

1 Why would that be there, if jurisdiction remained as
2 long as the asset was in the depository institution from the
3 beginning?

4 MR. SACHS: I'm not saying that forever that it
5 matters. But I am saying that while, as in this case -- let's
6 step back a minute and look at what they're -- involve in this
7 case there is an ongoing administrative proceeding. There is
8 both the -- there is a Firrea proceeding that is ongoing as to
9 these assets. Your Honor, at the moment, they filed a claim to
10 these very assets that was disallowed. If Your Honor were to
11 take concurrent jurisdiction over the same claim that must,
12 under Firrea, be adjudicated in D.C., you are raising starkly
13 the possibility of inconsistent rulings.

14 Let's assume, for a moment, that in the proceeding in
15 D.C. they proceed and it is determined there that the supposed
16 4 billion dollars in deposit accounts in fact are accounts that
17 include 3 billion dollars in tax refunds that belong to WMB,
18 not to WMI, no matter how WMI want -- the debtors want to
19 characterize it.

20 You are suggesting that you could independently
21 determine that issue and reach a different conclusion. And
22 that is exactly what Firrea is designed to prevent. To prevent
23 any other Court from adjudicating the question of whether
24 something is or is not an asset of the institution over which
25 the FDIC has put in receivership.

1 And in this case, there is going to be a
2 determination in D.C. as to each and every one of these issues.
3 And, again, the claims against JPMorgan Chase are founded upon
4 a determinant -- a requirement that a Court determine that
5 these were assets of WMI, not assets of WMV, and, therefore,
6 and therefore not transferred to JPMorgan Chase. So looking at
7 their adversary complaint, and looking at the D.C. complaint,
8 for example, the taxes issue.

9 They seek a determination in D.C. that the taxes
10 belong to them. They seek a determination in their
11 counterclaims in the adversary proceeding here that the taxes
12 belong to them. The same determination that is required to be
13 made.

14 And under 1821(d)(13)(D), that is a determination
15 that must be made through the exclusive jurisdiction of Firrea.
16 It goes to each and every asset practically that is in their
17 counterclaim. Trust preferred securities. They seek a
18 determination in the D.C. action, and through their proof of
19 claim that that is -- those are assets that belong to them, and
20 that they're entitled to that determination in the
21 counterclaims here. They simply seek the same determination,
22 and then say, and because JPMorgan Chase has it, they have to
23 give it back to us.

24 But it is founded upon the threshold determination
25 that this was an asset of theirs, as opposed to an asset of

1 Washington Mutual Bank, the subsidiary at the time of
2 receivership.

3 So each and every one of their claims, Trust
4 Preferred Securities, the accounts, employee benefit plans,
5 inter company payables and receivables, contributions, and then
6 vendor contracts, as to who owns vendor contracts. Each and
7 every one is identical and is founded upon for resolution, the
8 identical factual and legal determination.

9 And if --

10 THE COURT: Then if you felt that the jurisdictional
11 bar of Firrea required that all issues be decided by the D.C.
12 Court, why did you file your adversary asking me to determine
13 these issues?

14 MR. SACHS: We actually didn't, Your Honor. In the
15 adversary we filed, the first request we made is that these
16 issues in our request for relief, we claim that these issues
17 should be resolved by the D.C. Court. And solely to the extent
18 they are not resolved by the D.C. Court, should they be put
19 here for resolution by Your Honor.

20 There are what I would call a few cats and dogs that
21 are not at issue. None of the big stuff we're talking about
22 that are at issue. And of course we were under time lines to
23 file claims to protect our interest. But, fundamentally, in
24 filing the adversary proceeding, our first request, our
25 fundamental request is that these issues should be resolved, to

1 the extent they are disputed, by the Court in D.C. as part of
2 Firrea's process. And only to the extent they are not resolved
3 there, or in light of the outcome there, should there be a
4 determination here.

5 I mean, Your Honor, going on, just one more, they
6 claim, you asked Mr. Califano about it, they attack the
7 transaction by which the receiver -- the PNA transaction. They
8 claim it is a fraudulent conveyance. They claim it was an
9 improper transaction.

10 What could be -- you can't adjudicate just -- the
11 transaction is at issue. And what could be clearer under
12 1821(d)(13)(D), it's exclusive jurisdictional bar as any claim
13 relating to any act or omission of such institution or the
14 corporation as receiver.

15 They are challenging the act of the receiver in
16 electing to sell assets and liabilities to JPMorgan Chase under
17 the PNA agreement on certain terms and conditions. They
18 challenge the terms and conditions.

19 That is squarely, there's no jurisdiction in this
20 Court to determine that claim. It's in their proof of claim.
21 It is in the D.C. action. And it is -- there couldn't be
22 anything that is more squarely within the scope of the
23 jurisdictional bar than that.

24 Every single one of their claims, again, rests
25 foundationally upon a determination as to whether something was

1 or was not an asset of the bank at the time of receivership,
2 and/or the conduct of the FDIC in deciding what to do with the
3 assets of the receivership institution, WMB, and, therefore,
4 falls squarely with 1821(d)(13)(D).

5 There's never been, notwithstanding what you've
6 heard from the other side, there's never been a case like this.
7 There's no case where somebody is -- a debtor is simultaneously
8 pursuing a claim under Firrea, through Firrea's 1821(d)(13)(D)
9 claim process, and trying to circumvent that claim
10 simultaneously to have the same issues resolved by a different
11 Court that it prefers.

12 It simply prefers to have the Bankruptcy Court
13 resolve it, as opposed to having the D.C. Court, where they
14 filed the action, resolve it. But it's never been done before.
15 There is no case along those lines.

16 The cases that are cited involve factual
17 circumstances that are entirely at odds here. The only one
18 that is even remotely close is the Village of Oakwood case,
19 Your Honor. And in that case, it's a case where the Sixth
20 Circuit said, of course the bar applies to claims against the
21 successor, the people who stand in the shoes of the FDIC who
22 acquire the assets from the FDIC.

23 Because, if not, it would undermine the entire
24 foundation of the Firrea bar, because you could simply --
25 nobody would enter into a PNA transaction, because they would

1 be subject to all the claims that Firrea requires be brought
2 against the receivership. So every claim could be brought
3 against the person who is the successor to the interest of the
4 receiver. They said -- they almost laughed at the argument
5 that it didn't apply in that case. And it was, again, the same
6 sort of thing.

7 They tried to circumvent the Firrea bar by a bunch of
8 unsecured debt holders, by arguing in that particular case that
9 by suing only the successor bank under the PNA. And the Sixth
10 Circuit said, no, you can't do that. But Rosa, again, an
11 entirely different case, limited to a narrow section of Firrea
12 relating to the claim section of Firrea, overruled in
13 connection with other aspects of the decision, as well, but
14 involving a receivership that had been over for years, and
15 years, and years.

16 We have an ongoing, current receivership in this case
17 by the FDIC, and we have an ongoing claims process in this
18 case, which the debtors have initiated by filing their claim.
19 The debtors didn't have to file a claim against the FDIC and
20 the receivership. If they didn't think they were
21 jurisdictionally required to do so under Firrea, they could
22 have elected not to do it.

23 But they did, because they believed and knew they
24 were jurisdictionally required, and that's where they have to
25 litigate this issue.

1 Let me move on, if I could -- and in terms of just
2 efficiency and sense, the D.C. Court is the only Court that can
3 resolve all of these issues. There are these limitations as to
4 imposed by Firrea on adjudicating these issues as to whether
5 thee are or are not assets of the bank.

6 And, as I say, that's going to be outcome
7 determinative for the claims, whether they're asserted against
8 the FDIC or asserted against JPMorgan Chase. If the Court in
9 D.C. determines that the trust preferred securities are the
10 property of WMI and were not the property of Washington Mutual
11 Bank at the time of receivership, then we have no claim to
12 those assets directly as against Washington Mut -- the debtors
13 in this case, because they weren't the property of the FDIC to
14 transfer to us.

15 And our rights are only derivative of the rights that
16 the FDIC had, which is why everything implicates the rights of
17 the FDIC in this case. But the only Court that can determine
18 that in one forum and avoid risking inconsistent adjudications
19 is the D.C. Court. That's where this belongs.

20 Your Honor has three alternatives. And let me segue
21 in, if I could for a moment, into the question of the First
22 Filed Rule. Which, of course, as Your Honor's aware, is a
23 discretionary issue, but one that is founded in equitable --
24 strong equitable concerns of having efficient litigation,
25 avoiding duplication and avoiding inconsistent results.

1 That the Court that first acquires jurisdiction be
2 the one that resolves the case. The D.C. Court is the one in
3 this particular case that should, not only because it is the
4 first to have acquired jurisdiction over the issues here, but
5 it is the only Court that can give complete relief to everybody
6 in a single forum, given the Firrea jurisdictional limitations
7 that exist in any other Court.

8 If you look in this particular case, if you are not
9 to -- Your Honor has the discretion to stay, transfer or
10 dismiss the adversary proceedings here. In furtherance of
11 that, the FDIC has requested a stay.

12 We have suggested that the proper -- a preferable
13 course may be to transfer these actions to D.C., so they can
14 all be adjudicated together. But either way, the principles
15 that are applicable are one in the same.

16 They are the efficiency, avoiding duplication and
17 avoiding inconsistent results. All of those principles are
18 applicable here in spades. If the Court does not combine these
19 cases, there is the fundamental probability or possibility of
20 -- even if you could avoid the jurisdictional bar, you're
21 talking about the possibility of two different courts resolving
22 the very same legal and factual issues and coming to
23 inconsistent adjudications.

24 This is about as clear a case as there could possibly
25 be for exercise of that equitable discretion to put all of

1 these cases in one place so that the underlying factual issues
2 will be resolved one time, by one Court, with one set of
3 discovery, binding all of the appropriate parties in a Court
4 that indisputably has jurisdiction over all of the claims,
5 including claims for and against the FDIC.

6 THE COURT: Well, but it currently doesn't have all
7 the parties. Your motion to intervene hasn't been granted yet,
8 has it?

9 MR. SACHS: It has not been ruled on, Your Honor, but
10 there, again, there are two ways to deal with that. One, if
11 Your Honor were to stay this in favor of that, that clearly is
12 something that would be of relevance to the Court there.
13 Number two is, you could transfer these actions to D.C. and
14 thereby have all the parties there.

15 And the third is, I assume, at some point in time,
16 the FDIC could bring us in as a third party in that case, if
17 appropriate to do so.

18 So I don't think there's any serious issue that are
19 -- we will not have a way into that forum, Your Honor. And,
20 again, you can transfer this and there's no issue, at that
21 point in time. The only reason we are not a party there is
22 because the debtors have objected to us being a party.

23 Nobody else has objected. The debtors are the ones
24 who are preventing us from being a party there. The debtors
25 are the ones who seem to want to litigate the same case in

1 multiple forums. They don't want -- they don't like Firrea.
2 They don't like the limitations Firrea imposes upon them. And
3 they want to be in different forums. And they have -- they're
4 the only ones who have objected to our participation in that
5 case.

6 So I think there's a substantial likelihood that we
7 will end up in that case eventually. I can't explain why that
8 Court hasn't ruled on it. We've tried to find out what's going
9 on there, with limited success.

10 The Court there doesn't always have hearings on
11 motion. Generally does not have hearings, so we don't know
12 when the Court will rule. We've asked for a prompt ruling,
13 we've conveyed that request.

14 But, again, we are the ones arguing that this case
15 should be adjudicated in that forum, because it is the only
16 forum. And having this adjudicated in multiple places imposes
17 all of the risks. But the First Filed Rule and the general
18 equitable principles that underlie it, are designed to prevent.
19 And so, either way, Your Honor, we think that both
20 jurisdictionally this must be resolved in D.C., given the
21 limitations imposed jurisdictionally by Firrea.

22 Or even if Your Honor did not want to rely upon that,
23 that these cases should go there to have a single, consistent
24 adjudication as to whether the assets at issue, the same assets
25 in both claims, are the assets of WMB or the debtors.

1 Because that is outcome determinative as to all of
2 these claims. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. CARLINSKY: I scribbled a lot of notes, so I'm
5 going to try to cover as much as I can. I may jump around,
6 Your Honor. Mike Carlinsky, again. Let me first just pickup
7 on the last point that Mr. Sachs was mentioning, which is the
8 D.C. action.

9 That D.C. action is filed under Firrea. It is a
10 limited action. And it is an action where the Court has
11 limited jurisdiction. We oppose the intervention. Who knows,
12 maybe Mr. Sachs has a crystal ball, but we think that there is
13 a serious issue whether Chase could ever intervene there,
14 because it is under Firrea, and Firrea is limited to claims
15 against the FDIC.

16 But I don't profess to predict what's going to happen
17 there. What I will say Your Honor that's critical here is, we
18 did not file a claim against the FDIC in Washington for the
19 deposits.

20 As I read before, we filed a protective claim that
21 said, in the event this Court, or in the event we somehow have
22 lost our rights to the deposit, we are preserving that claim.
23 So I think with respect to the deposits, it is truly a misnomer
24 to suggest we filed a claim there.

25 Mr. Sachs made the point that on the deposits, the

1 core issue, and I tried to quote him exactly, was, or is, was
2 this the property of WMB, or was this the property of WMI?
3 Your Honor made the point, isn't that right in my wheelhouse,
4 in the exclusive jurisdiction of this Court. Answer, yes. But
5 more fundamentally, why can't that issue, which is a factual
6 issue, which, frankly, as Mr. Kirpalani will talk about after,
7 is before the Court, what is so complicated about that issue
8 that is Court is incapable of deciding that issue?

9 That's a simple one, that's a simple one. Now, more
10 broadly, what we have heard is Firrea, Firrea, Firrea, as if,
11 my God, this statute is there and no one can move, we're frozen
12 in place by Firrea.

13 Let's remember why Firrea was enacted, and I won't
14 tread over old ground. But it was enacted so that, when the
15 FDIC takes over an institution, and it's in that crisis mode,
16 it's not attacked from all sides and having to defend itself in
17 litigations all over the world.

18 That's not this case. And more importantly, we saw
19 the cases. Rosa is good law. And Hudson, which is after
20 National Union, tells us exactly what Rosa stands for. There
21 was a suggestion made, Rosa is a very different case. The
22 receivership was long over.

23 I urge the Court to read Rosa. Not only was the
24 receivership of the two -- the first two institutions not over,
25 but the Third Circuit commented, by the time the case came to

1 Court, the Third Circuit, the third institution was in
2 receivership.

3 Yet, the Third Circuit says in Rosa, we look at the
4 jurisdictional bar issue at the time the complaint was filed.
5 Doesn't matter to us that today this case -- this company is in
6 receivership.

7 The question was at the time the complaint was filed,
8 was it in receivership? No. The answer was clear. Therefore,
9 no jurisdictional bar.

10 Your Honor asked another question, although I think
11 Mr. Califano didn't quite get it. The question was, and I
12 don't mean to -- I think there was a sort of --

13 MR. CALIFANO: You meant it in a nice way.

14 MR. CARLINSKY: I meant that in the nicest way.
15 Think about it. Again, I hate to use my mother's example in
16 vain, but right now, there are depositors out there all over
17 the land that have what they think are accounts at JPMorgan
18 Chase. What happens if depositor goes to the bank and says,
19 give me my deposit.

20 And Chase says, what deposit? You don't have a
21 deposit here. You had a capital contributions, or whatever the
22 answer is. Are we seriously contending that because those
23 assets have their lineage from a failed institution, that those
24 depositors either have their claims barred because they didn't
25 go through Firrea, or they have to file in the D.C. Court?

1 It's absurd. And those cases recognize it's absurd.
2 Let me say a word, then, about the Oakwood case, which we've
3 now heard, Oakwood, Oakwood, that's the solution. Oakwood's a
4 Sixth Circuit case, so obviously it's not binding authority.

5 But, more importantly, here's what happens in
6 Oakwood. First of all, the assets in question -- and let me
7 take a step back. The plaintiffs in Oakwood are raising breach
8 of fiduciary duty claims against the FDIC about creating a sham
9 bank. The opinion says so.

10 The assets, which are the subject of the action,
11 never get sent to the depository institution that's not in
12 receivership.

13 So what the plaintiffs do, because the plaintiffs in
14 that case failed to go through the administrative process, so
15 the bar would stand in contravention, unless they can find a
16 way outside the bar.

17 So they sue a bank not in receivership. What the
18 Sixth Circuit says is, ut-uh, that's too cute. Your claim, and
19 the Court says it plain as day, it says, even though the claim
20 is against the FDIC for a fraud, and more importantly, the
21 assets at issue never left the FDIC to go to this bank, we're
22 not going to allow you to bring a claim against an institution
23 where the assets never left the FDIC's possession.

24 So it is a very different case. The bar applied
25 there because the Court says, this is really about the assets

1 still in receivership, still in a institution in receivership.

2 Your Honor, so the jurisdictional bar, I hope to give
3 the Court comfort, doesn't apply. There is no Firrea mandate
4 here that says, Judge, you can't act. And we urge the Court to
5 go forward.

6 Now we get to the issue of first filed. Again, we
7 are somehow being asked, in essence, to be penalized because we
8 file an action in D.C., as we were required to do. Now this
9 isn't a case of first filed. The typical first filed case, as
10 Your Honor I'm sure knows, is Carlinsky sues Califano in D.C.
11 Califano turns around and sues Carlinsky here and is trying to
12 get the second Court to move in advance of the first Court.

13 We filed the D.C. action, as a protective measure.
14 But we want to proceed, we're the plaintiff there, but we want
15 to proceed here with our claim.

16 And the easiest one is the deposit claim. Because
17 it's bound up in D.C., it is here, it is a core -- it is within
18 the exclusive jurisdiction of this Court. And our turnover
19 proceeding is a core proceeding of this Court.

20 The last point I would make is, Judge, we heard
21 there's no prejudice -- there's no prejudice. Well let's just
22 pack up and we'll all go to D.C.

23 And Chase, which of course did file an adversary
24 proceeding here, did file 40 proofs of claim months before that
25 here, Chase, too, is saying, yeah, let's all go to D.C., what's

1 the prejudice?

2 Well there's prejudice. The courtroom is filled with
3 creditors. And the creditors are saying, give us our money
4 back. And what Chase wants to do, because the longer they hold
5 onto those deposits and pay no interest, the longer they
6 benefit, and the worse we are.

7 And so there is prejudice. And the last point I
8 would make is, in the D.C. action, we also heard a comment, I'm
9 sort of going back to something that Mr. Califano said. The
10 whole shooting match could be heard down in D.C. Well, Judge,
11 they're talking out of both sides of their mouth.

12 Because what they did in D.C., the FDIC, they filed a
13 motion to dismiss, and they say your claims, meaning WMI, your
14 claims, the so called claims we -- the whole thing could be
15 decided down there.

16 Your claims, other than the ones for which you
17 submitted proofs of claim, all ought to be dismissed, because
18 they're all barred from -- barred under Firrea. So what
19 they're doing is, they are prejudicing us. They're prejudicing
20 us by delaying us, they're prejudicing us by trying to send us
21 to a Court where there are these motions pending.

22 We belong here, this Court has exclusive jurisdiction
23 over the assets. And we respectfully urge the Court to deny
24 the stay motions, let's move forward and let's get, at least to
25 the issue of the turnover of the deposits, so that we can get

1 money into the estate and we can start to prepare for
2 distributions to the creditors who are prejudiced.

3 Thank you very much, Your Honor.

4 THE COURT: Thank you.

5 MR. STRATTON: Good afternoon, Your Honor. David
6 Stratton for the Committee.

7 Your Honor, I'd like to offer the Court some thoughts
8 on the three volumes of briefing on this issue. And what I'll
9 try to do is focus on some issues which I think should be
10 helpful, or I hope will be helpful to Your Honor in deciding
11 the stay issue, which is really what is before us.

12 The first point I'd like to address is whether or not
13 the Court should decide the motion now. And it touches on the
14 issue Your Honor raised about -- and Chase and FDIC have raised
15 about, can the Court down there grant complete relief.

16 Chase is not a party to that litigation. The Court
17 may decide, because it's really an appeal from the denial of
18 the claim, that Chase doesn't belong in that litigation because
19 it's an appellate procedure involving the FDIC, and the debtors
20 are not a pool party where everybody who thinks they might have
21 a claim to some of the assets in the receivership, who were not
22 in the receivership, depending on what the deposits end up
23 being, should become a party and get -- so that the matter gets
24 completely out of hand.

25 The other reason why I think Your Honor might want to

1 hold your hand on this issue, is that it's not clear what that
2 litigation's going to look like when all is said and done.

3 As I understand it, the Galvaston action, which was
4 the subject matter of some discussion in the context of the
5 2004 motion the debtors file, the FDIC has filed a motion to
6 transfer venue of that case back to D.C.

7 Now if we start piling all this litigation together,
8 the concern I would have, and I hope Your Honor shares this
9 concern, is that we're going to have a morass, a Gordian knot
10 of mythical proportions, which will takes years, and years, and
11 years to cut through, to the detriment of the creditors of this
12 estate.

13 And I'm going to talk about that issue a little while
14 later. With respect to the second point, Your Honor, it's the
15 jurisdictional issue. And I'd like to refer to the FDIC's
16 memorandum of law in support of it's motion to stay, which was
17 filed on June 1st.

18 This looks to me like a two-party dispute. Chase
19 says it bought a bunch of assets out of the receivership, or
20 assets which weren't in the receivership, in the case of the
21 savings bank, and we don't want to lose track of that sight --
22 or point, as Mr. Kirpalani has noted for us, but Chase says, we
23 bought a bunch of stuff. The debtor says and the Committee
24 says, no, you didn't.

25 The deposits are ours, the tax refunds are ours, so

1 on, and so on, and so forth. It's a two-party dispute. And
2 the FDIC, when they filed their memorandum of law, agreed with
3 that position. And I refer Your Honor to page 1, at the very
4 outset of their papers the FDIC wrote, and I'm going to come
5 back to this quote in connection with another point.

6 "Disputes concerning the ownership of assets and
7 assumption of liabilities between the debtors and JPMorgan
8 Chase, JPMC, have been a centerpiece of these Chapter 11 cases
9 since their filing. The two adversary proceedings that are the
10 subject of this motion to stay..."

11 And now I'm going to skip over an indented phrase or
12 a phrase they've used.

13 "...reflect the parties' latest attempts to seek a
14 determination of their respective rights to certain disputed
15 assets."

16 It's a two-party fight. If Your Honor has the
17 ability to resolve those issues, it's at the very core of what
18 this Court does. That is, the Court determines, not everyday,
19 but on a regular basis, what the assets of the estate are, and
20 what the assets of the estate aren't. That's the fundamental
21 jurisdictional grant that congress gave this Court. And the
22 Court should not give it up lightly, or at all, just because
23 the FDIC says you should, or because the FDIC would like to
24 read Firrea so broadly as to provide, as Mr. Carlinsky argued,
25 that from now on, forever, a year from now, two years from now,

1 three years from now, if someone says to Chase, oh, by the way,
2 I'd like my deposit back, Chase says oh, no, no, no, you didn't
3 file a claim in the FDIC receivership proceeding, so your
4 claim's barred, or the only place you can try to get your money
5 back is in a lawsuit against, not us, but the FDIC in the
6 District of Columbia, or where the bank had its headquarters.

7 That's not, I think, a proper reading of the statute,
8 and the cases don't seem to agree with that.

9 On a narrower basis, with respect to the deposits at
10 the savings bank, as opposed to the bank that was in a
11 receivership, there is absolutely no basis to argue that Firrea
12 precludes this Court's exercising jurisdiction over that
13 deposit. It was never in a receivership.

14 And the bulk of the deposit, we believe, was in that
15 account. Now people may take issue with that, and they may
16 say, well there's this issue and that issue. But that issue --
17 those issues for Your Honor to decide. There is no Firrea
18 overhang here. And when I read the papers, the 40 some odd
19 papers that were filed by Chase and the FDIC Monday night on
20 this issue, they don't address it.

21 Or the FDIC says "The FDIC receiver will reserve its
22 arguments as to this assertion for another day."

23 Well, today's the day. I'm sorry, but they if want
24 to stay the proceeding, they've got to carry the burden as to
25 their jurisdiction over this asset. They don't have any.

1 So at least as to that, Your Honor can and should
2 deny the stay motion. As to the rest, I think it's a two-party
3 dispute, and Your Honor can and should assert your
4 jurisdictional prerogatives and say, you know what, I can do
5 this, I can do this promptly, and I'm going to do it.

6 Let's talk about promptly. Because the parties have
7 discussed, and Mr. Carlinsky discussed briefly, the issue of
8 prejudice. But we represent the creditors and we've got a
9 courtroom full of them

10 And I'd like to talk a little more about that. The
11 FDIC, in its reply brief, makes what I view to be an incredible
12 assertion, and I'm quoting.

13 "The FDIC receiver's motion if granted will not delay
14 or stall these bankruptcy cases, as the debtors assert."

15 And then Chase says in its brief:

16 "A stay would in no way prejudice the debtors."

17 I would submit to Your Honor that that conclusion is
18 impossible to sustain. Both the FDIC and Chase ignore the
19 point made in the debtors brief, and I'm referring -- I'm
20 referring to page 30 of the debtors' opposition to the stay
21 motion, in which the debtor refers to a statistic, which I
22 think we need to keep front and center in these deliberations.
23 And I'm reading now.

24 In 2008, the median time from filing to the
25 commencement of trial for civil cases commenced in the District

1 Court for the District of Columbia, was greater than 3 years.

2 And they cite for that proposition the 2008 Federal
3 Court management statistics, U.S. District Court judicial
4 caseload profile. Three years. That means, for the next three
5 years, we'll have litigation, upon litigation, upon litigation.

6 I could recite for Your Honor the multiplicity of
7 litigation that Chase has sparked in this case. They even
8 opposed the imposition of a bar date as to themselves.

9 And they continue with their motion to withdraw the
10 reference, which basically is that, if we lose here, we'll just
11 ask the District Court to give us the same result.

12 So we'll have tons of litigation in the District
13 Court, we won't get the trial for three or more years, and,
14 meanwhile, what's happening here? Well money's gone out the
15 door like crazy to professionals. We can't begin to imagine
16 what the hourly rate for the professionals in this courtroom
17 is.

18 Two, the administration of this estate will come to a
19 screeching halt, because all the assets of this estate, for the
20 most, part are at issue. Chase is saying, they're all ours,
21 and the estate's saying, no, they're not. They belong to us.

22 So we won't be able to propose a plan that has any
23 kind of sense to it. A disclosure statement would -- how do we
24 write a disclosure statement? We don't know what you're going
25 to get, and we don't know when you're going to get it.

1 But you'll get it when we know what it is. That
2 doesn't work. And so, at the end of the day, these creditors,
3 and the thousands of other creditors in this case, will sit
4 there and wait, and wait, and wait as the estate gets a little
5 bit smaller and a little bit smaller each day through the costs
6 of administration.

7 And they may get some money four or five years from
8 now. And that to me, plain and simple, is prejudice. And that
9 in fact is my primary concern about this whole mess.

10 Let me talk about one last point, and I call it the
11 bankruptcy issue. I've touched on it a little bit, but I think
12 it goes to both the jurisdictional issue that -- the Firrea
13 argument that the FDIC and Chase makes, and also to the first
14 filed.

15 And by way -- in context, by way of background, I'd
16 like to focus on a couple of things. This bankruptcy was filed
17 last September, the day after the receivership was imposed and
18 the assets were sold to Chase.

19 As I've already indicated, the FDIC has conceded
20 that, from the day this case was filed or shortly thereafter,
21 disputes between the estate and JPMC have been at the
22 centerpiece of this case.

23 Chase has filed a proof of claim. It tried to get a
24 different bar date, or no bar date, but it was forced to file a
25 claim and it did file a claim. It also filed an adversary

1 proceeding, which in many ways is a mirror image of its claim.

2 It's a little odd, they said here are your claims one
3 through, whatever. And then when they filed a lawsuit saying,
4 these are our claims, decide them, Judge.

5 I'm not sure why they did that, and I'm not going to
6 speculate. The FDIC has filed a claim. The debtors filed a
7 turnover action. The turnover action, at least with respect to
8 the motion to dismiss, has been briefed. The debtors have
9 filed a motion for summary judgment in the turnover action.

10 Those deposits, that four billion dollars, how many
11 cases do we ever have with billions of dollars to fight over?
12 And maybe that's part of the problem. Four billion dollars,
13 that's the centerpiece of this estate.

14 And once that's determined, and especially if the
15 debtors, as we believe they are, are correct that that 4
16 billion dollars belongs to this estate, we can move forward
17 with a Chapter 11 plan and confirmation, all the while
18 respecting the FDIC's rights with respect to setoff, and
19 whatever rights it asserted in its claims, because those aren't
20 new issues.

21 Creditors have setoff rights all the time. Creditors
22 file proofs of claim all the time. And those issues can be
23 addressed in the context of a plan.

24 So where does that -- where am I going with this
25 argument? Well, first, I think, and the FDIC has more or less

1 admitted, that this bankruptcy proceeding, not the litigation
2 in the District of Columbia, but this very bankruptcy
3 proceeding, is really the first proceeding in which these
4 issues were put before a Court. It's the first filed action.
5 Second, it's a fundamental, fundamental precept of bankruptcy
6 that you submit yourself to the jurisdiction of a Court when
7 you file a proof of claim.

8 It's so fundamental, that it trumps a creditor or an
9 individual's right to a jury trial. How can it not also trump
10 the Firrea jurisdiction given to the FDIC? And the debtors
11 address that issue in their papers, and I won't go into that in
12 any detail here.

13 The last point on this argument, Your Honor, I'd like
14 you to consider is this, and this is the sort of bankruptcy
15 lawyer talking. We won't know what the assets are for years.
16 We won't be able to put a plan together. The estate will be
17 diminished. Your Honor will be giving up jurisdiction that's
18 clearly given to you by the Bankruptcy Code and Title 28.
19 Creditors rights will be prejudiced because of the delay, and
20 because of the effect on the administration, the size of the
21 assets, just through erosion, through payment of fees and
22 expenses.

23 Based on that, I would respectfully request that Your
24 Honor first has the discretion to decide whether or not to stay
25 this matter, and Your Honor exercise that discretion to deny

1 the stay.

2 If Your Honor has any questions, I'd be happy to
3 answer them.

4 THE COURT: No. Thank you.

5 MR. STRATTON: Thank you,

6 MR. O'CONNOR: Your Honor, my name is Paul O'Connor.
7 And a pro hac vice application has been filed in the Court
8 earlier this week. We represent -- I represent Washington
9 Mutual note holder's group, which collectively holds at least
10 3.3 billion dollars of value of outstanding debt securities of
11 the debtor Washington Mutual.

12 We've submitted a statement pursuant to Section 1109
13 of the Bankruptcy Code in opposition to the motions filed by
14 JPMorgan and FDIC that have been argued here today.

15 And I don't want to belabor any of the points that
16 have been made. We obviously associate ourselves and join with
17 the remarks that have been made by the debtor and for counsel
18 for the Committee.

19 However, there are a couple of points I would like to
20 make. And that is, first, as the holder of 3.3 billion dollars
21 in the face amount of WMI debt, we are obviously the principal
22 stakeholder in this -- these Chapter 11 cases.

23 We have a real interest in the outcome of this estate
24 and ensuring a maximum value for creditors. Second, the real
25 issue that we're all arguing about here today, is what to do

1 with this 4.4 billion dollars in deposits at JPMorgan. And as
2 others have said, and I'll reiterate here today, those are core
3 assets of the estate. Those are the assets of the estate.

4 There's really -- there's other stuff to argue about,
5 but without those assets being decided and ruled upon by Your
6 Honor in the context of this proceedings, moving forward on
7 plans and plan reorganizations is almost impossible.

8 If this matter is not dealt with in this Court,
9 resolving these Chapter 11 cases, in our view, will
10 fundamentally be impossible. And I do want to also point out
11 that the prejudice to creditors from the delay that's likely to
12 come if we are sent to D.C. is significant.

13 And since we're all here and the assets can be dealt
14 with here, we think they should be dealt with here.

15 Finally, you know, I think it's also important to
16 point out that there are two adversary proceedings that we're
17 dealing with here today. One of which is an adversary
18 proceedings that JPM brought.

19 They chose this forum. They picked it. They filed
20 the papers here, and then the debtor responded with some
21 counterclaims. And now we're hearing arguments that having
22 picked this forum, the debtor having then filed counterclaims
23 in that, that somehow or another, because they were forced by
24 statute to file a more limited pleading in D.C., they should be
25 prohibited from going forward in the proceeding that JPM filed

1 here.

2 And we think ultimately that's an argument that
3 doesn't hold together. And so we'd urge the Court to hear this
4 matter and to decide these matters and not to stay or dismiss
5 them. Thank you.

6 MR. SACHS: Your Honor, could I indulge you for just
7 a couple of seconds to let Ms. Feldstein respond to a few
8 jurisdictional issues that have been raised?

9 THE COURT: Sure.

10 MR. SACHS: Thank you, Your Honor.

11 MS. FELDSTEIN: Good morning, Your Honor. Hydee
12 Feldstein of Sullivan and Cromwell appearing on behalf of
13 JPMorgan Chase. And I rise very briefly principally to address
14 some of the jurisdictional issues raised by Mr. Stratton and by
15 Mr. O'Connor.

16 As a preliminary matter, we did file this morning a
17 response to the note holders papers asking that they file a
18 Bankruptcy Rule 2019 statement. And I would ask that the the
19 Court at least take that into consideration. We have not
20 formally moved at this time, I will acknowledge that.

21 But the Court can also on its own initiative, either
22 request that they file it, or at least take that into
23 consideration in hearing the note holders' arguments.

24 The other issues I'd like to talk about very briefly.
25 I stood before you in October in connection with a stipulation

1 for deposit accounts. And on behalf of JPMorgan Chase, I made
2 two points to the Court. One was that we did not think that
3 possession of funds, to the extent funds existed, was really
4 the issue.

5 That the issue to us was twofold. One was, we had
6 not determined what JPMorgan Chase's rights in and to those
7 funds were. And we did not wish to prejudice our right to
8 those funds, which is why the original stipulation had a full
9 blown deposit account agreement with post petition setoff
10 rights associated with it.

11 With that basis, we were prepared to take into
12 account and defer all of the ownership issues. So contrary to
13 everybody's assertions, we haven't been sitting here trying to
14 "hang onto the money," but we have been trying to preserve our
15 own rights in and to those funds.

16 The second point that I would make to the Court is,
17 we said to you back in October, we do not want to be subjected
18 to double jeopardy. Whatever happens here, Your Honor,
19 whatever the funds are, that which is ours ought to belong to
20 us, and we ought not to have to pay twice. I would point out
21 to the Court that the D.C. action was filed on Friday, March
22 20th. Our adversary proceeding before this Court, which asks
23 in the first instance to be sure that whatever rights there are
24 in the assets at issue in D.C. go to the D.C. Court, was filed
25 on March 24th.

1 We had to file that in order to stave off the very
2 concern that we had expressed to you back in October. We did
3 not want to be in the position where JPMorgan Chase's rights
4 with respect to these assets were subject to competing and
5 potentially inconsistent determinations.

6 We did not want to be in a position where our
7 liabilities, because, Your Honor, to some extent the deposit
8 account, is also arguably a liability of either the
9 receivership estate as successor to the depository institution,
10 or of JPMorgan Chase.

11 We did not want to be in a position where those
12 liabilities could be inconsistently determined, or determined
13 twice. I understand that the creditors of this estate would
14 like to take the money and run. They'd like to say, thank you,
15 JPM, pay it over to us and you worry about all these other
16 assets.

17 There's 4 billion in trust preferred securities.
18 There's at least 3 billion in tax refunds, by their own
19 admissions. I understand that claims to 4.4 billion, or 3.7
20 billion, depending upon what you look at, in deposit in deposit
21 accounts, or book entry transfers, or offsetting liabilities,
22 or master notes, or whatever they are, is a lot of money.

23 But is not all the money that's at stake in this
24 proceeding, or in the D.C. action, Your Honor. And at the end
25 of the day, that's the problem. The problem is, that as I have

1 said to you for 8 months now, JPMorgan Chase is to some extent,
2 Malcolm in the Middle.

3 So long as our rights are adjudicated in a single
4 forum, where we're not subject to inconsistent determination,
5 where all parties with claims against us can be bound by that
6 determination, and where in that forum we are in a position to
7 protect our rights as the legitimate purchaser from an assignee
8 of the FDIC, that's what's important.

9 I want to move very quickly, Your Honor, we did file
10 a motion to withdraw the reference last night. We did that
11 largely due to the counterclaims that were filed before this
12 Court by the debtors, or by the very concern that we had that,
13 if the stay motion was not granted, we would be a position
14 where we were, again, in two forums on the same issues and
15 subject to inconsistent determinations.

16 We have accompanied that withdrawal with a request to
17 transfer this litigation over to the D.C. action. And if you
18 can indulge me for a moment, the issue of the deposit account
19 is a simple one. Is addressed at some length in the withdrawal
20 of the reference papers,

21 It's not a simple determination, Your Honor. WMI was
22 the holding company of two depository institutions, and itself
23 subject to banking laws and principles, including sections
24 23(a) and 23(b), limiting affiliate transactions with its
25 depository institutions. Both WMB and WMBFSB were subject to

1 lending limits. They were subject to rules and regulations
2 regarding safety and soundness. There were all kinds of
3 principles under Title 12, not just with respect to, what did
4 the FDIC have at the time that the receivership receiving was
5 commenced, and not just with respect to, what did JPMC acquire.
6 But in untangling the Gordian Knot that is already before this
7 Court, Your Honor.

8 There is a Gordian Knot. And the question is, will
9 it be all in one forum, or is it going to be kind of split up
10 and we're going to be dealing with Gordian Knots in two
11 different forums, or three different forums, where people can
12 be subject to inconsistent determinations.

13 But the unraveling of that very tapestry itself
14 requires consideration of Title 12. There's no way around it,
15 Your Honor. There's two competing insolvency regimes. There
16 are in fact principles that govern the insolvency of a
17 depository institution.

18 To give you just an example. The deposit accounts
19 here, to the extent they were provided by book entry transfer
20 to create a so-called demand deposit account, under the FDIC's
21 insurance program today, checking accounts that are demand
22 deposit accounts are insured without limitation.

23 So by a stroke of the pen, and by somehow creating an
24 inter company obligation that's called a demand deposit
25 account, WMI is contending that by book entry transfer, if a

1 holding company did it today as to a depository institution, it
2 could put the full faith and credit of the FDIC and our
3 taxpayer dollars at risk. And, Your Honor, I submit to you
4 that the determination of those accounts simply can't be made
5 without regard to Title 12.

6 And for that reason, we filed our motion to withdraw
7 the reference. And for that reason, it would be appropriate to
8 simply put this matter over to the D.C. Court for its
9 consideration, as it seems to be the only Court that has
10 complete jurisdiction and can afford complete relief to the
11 parties.

12 Does the Court have questions of me?

13 THE COURT: Well you say it has complete
14 jurisdiction, but is that clear after Rosa?

15 MS. FELDSTEIN: I think, Your Honor, that if this
16 matter were transferred to the D.C. action, yes, it has in --
17 there's in personam jurisdiction, there's in rem jurisdiction,
18 and there's subject matter jurisdiction.

19 I would submit to the Court that the D.C. Court has
20 subject matter jurisdiction to determine what were the assets
21 of the depository institution, which this Court does not. It
22 has in rem jurisdiction over those assets, to the extent that
23 they are here as a successor, we are here as a successor and a
24 purchaser from the FDIC.

25 And it would have in personam jurisdiction over us.

1 We've effectively have consented to be part of that action and
2 have asked to be part of that action by our motion to
3 intervene.

4 We are not going to attempt to contest that Court's
5 jurisdiction...

6 (12:39:35 Recording stops - 12:55:58 Recording Resumes)

7 THE COURT: All right.

8 MS. FELDSTEIN: Thank you very much. I'm going cede
9 to Mr. Califano.

10 THE COURT: Okay.

11 MR. CALIFANO: Your Honor, I'd like to open by
12 pointing out the jurisdiction is not exclusive when the
13 ownership of assets is at stake. And the question of whether
14 1334 trumps Firrea, that's already been addressed.

15 And at page 17 of our reply brief, we address that
16 case and we address that issue, and we cite the cases.

17 But what I would like to do, Your Honor, is reconcile
18 the -- the question of Rosa and National Union, because I think
19 there's been some confusion created.

20 And the fact is, Your Honor, if you track the cases
21 and the actual language of the statute, it is clear that Rosa
22 and Henrich and those cases don't apply.

23 And one thing we need to keep in mind, when we're
24 looking at these cases, is that this is not a tangential attack
25 on a transfer that somehow was related to the receivership.

1 This is the central act of the FDIC as receiver.

2 As we said, they came in as receiver, they took over
3 and immediately sold the assets. Substantially all the assets
4 then JPMorgan Chase assumed substantially all the liabilities.

5 THE COURT: But let's go to the history of Firrea
6 and, when the RTC in earlier days the assets of the bank were
7 held for some time. And really wasn't Firrea to prevent the
8 lawsuits and interference with the receivership? And can you
9 extend the jurisdiction by transferring those assets, the first
10 day?

11 MR. CALIFANO: We're not extending the jurisdiction,
12 okay.

13 THE COURT: Well you're seeking to extend it to any
14 claims against JPMC.

15 MR. CALIFANO: But it's not, Your Honor. Because the
16 claims, as we've said throughout --

17 THE COURT: Are identical.

18 MR. CALIFANO: -- they've made claims about the
19 actions of the receiver. The claims that they're making
20 against JPMorgan Chase are the flip side of those claims.
21 We're -- if you think about the history behind Firrea, Your
22 Honor, we're right now in a situation which is as bad, if not
23 worse, than then.

24 And right now the FDIC is selling banks. They seize
25 banks, they sell banks.

1 There needs to be a market to assume the liabilities.
2 There needs to be buyers. Those buyers need finality, much
3 like a 363 buyer who comes into the Bankruptcy Court needs to
4 know that there is finality. So there are the same, if not
5 stronger policy considerations now. But when you look at Rosa,
6 Your Honor, Rosa was dealing with the first clause of
7 1821(d)(13)(D)(i). Any claim or action for payment from.
8 Okay? The National Union case, the other cases deal with --
9 the language, or any action seeking a determination of rights.

10 Now the Third Circuit in National Union looked at the
11 issue and said, does the claim that is at issue need to be a
12 claim against the FDIC as receiver that would be part of the
13 administration process for the bar to apply.

14 Because there's a narrow universe of claims, as
15 opposed to any action with respect to determination. And if
16 Your Honor will allow me, the Third Circuit said in National
17 Union:

18 "In Rosa we indicted that there was an
19 interrelationship between the jurisdictional bar contained in
20 Section 1821(d)(13)(D), and the administrative claims procedure
21 contained in 1821(d)(3), (d)(5) and (d)(6). By characterizing
22 the jurisdictional bar as a statutory exhaustion remedy."

23 Meaning creditors had to exhaust their claims by
24 going first to through the receivership. Surely that
25 characterization is accurate as to a claim, i.e. an action

1 asserting a right to payment.

2 In the portion of the opinion characterizing the
3 jurisdictional bar as an exhaustion requirement, the Rosa Court
4 addressed only claims, as opposed to the any action language
5 contained in 1821(d)(13)(d)(1), stating that subsection (d) of
6 1821 provides for de novo District Court jurisdiction only
7 after the filing of a claim with and the initial processing of
8 that claim by the RTC.

9 But Rosa did not address or decide the interesting
10 issue, which is still an open question, whether the class of
11 actions addressed by the administrative claims procedure is
12 smaller than the class of actions addressed by the
13 jurisdictional bar.

14 And the Third Circuit went on to rule, Your Honor,
15 that the bar of 1821(d) is larger, the universe of actions that
16 are effected, is larger than simply those claims which need to
17 be asserted in the receivership.

18 That's what National Union did, that's what Rosa
19 means. Your Honor this is an attack on -- this is a lawsuit,
20 which is an action seeking a determination of rights with
21 respect to the assets of any depository institution for which
22 the corporation has been appointed receiver.

23 And it is a claim relating to any act or omission of
24 such institution, or the corporation as receiver. It falls
25 right within the jurisdictional bar.

1 They can't circumvent the jurisdictional bar by
2 bringing an action against JPMorgan Chase. That is the -- and
3 in the counterclaims that is the mirror image of the claims in
4 the receivership. It is the mirror image, it is against
5 JPMorgan Chase, as opposed to the FDIC.

6 But it goes to the core of the actions of the FDIC as
7 receiver. With respect to the reference to the motion to
8 dismiss in D.C., that's not really -- we did make a motion to
9 dismiss, but we did not move to dismiss any of the claims that
10 relate to the receivership proof of claim.

11 We did not move -- we moved to dismiss claims which
12 we believe are improper, but we did not move to dismiss any
13 claims which relate to the proof of claim they filed and
14 receivership claim. They're ancillary claims that we moved to
15 dismiss.

16 Also with respect to the statements that we've heard
17 about the Bankruptcy Court, 1821 is very clear, Your Honor. It
18 says any Court -- I'm sorry, it says no Court can review the
19 actions of the FDIC as receiver other than the District Court
20 in the two choices of venue. Where the bank was situated, or
21 in the District of D.C.

22 There's no exception for Bankruptcy Courts. and
23 there's a bankruptcy District of New Jersey case, cited in our
24 reply brief, which addresses that, Your Honor. And with
25 respect to, you know, going back to Mr. Carlinsky's mother,

1 once again, and I'm sorry. But that issue, that's a red
2 herring, because that only relates to the FDIC's exercise of
3 9.5. So she would only be denied her deposit if the FDIC had
4 previously exercised its 9.5 right. It's not every depositor,
5 everywhere.

6 But, Your Honor, if you look at the cases, if you
7 look at Rosa, if you look at Oakwood, this issue is resolved.
8 The fact is, this is an attack, whether the FDIC is a nominal
9 defendant in the adversary proceeding or not, this is an attack
10 on the actions of the FDIC.

11 They have their forum, the forum is not here. Thank
12 you.

13 MR. CARLINSKY: Your Honor, I will be ever so brief.
14 First, I think it's obvious that all of the parties are before
15 this Court. The FDIC filed proofs of claim. JPMorgan has
16 filed proofs of claims and an adversary proceeding. And the
17 debtors are here.

18 This Court can afford full relief. The second point
19 I want to make is, Mr. Califano says that the claims here
20 represent a central attack. Well how is the deposit claim,
21 which JPMorgan itself described as a question of, was it an
22 asset at one institution, verse the other?

23 Any kind of central attack, as if that would even be
24 relevant in connection with the jurisdictional bar, but saying
25 so doesn't make it so. The question on the deposits is a

1 simple one. It will be a -- one that it may be bound up in
2 some facts, but it is a simple one that has nothing to do,
3 frankly, with an attack on the FDIC.

4 I want to just give the Court one more piece of
5 comfort as to what Rosa stands for, what National Union stands
6 for, and then Hudson, which is after National Union, and I read
7 the Court the quotes earlier from Hudson, which is the latest
8 of the three pronouncements. And Hudson is clear that the
9 jurisdictional bar is limited to a claim against the
10 institution in receivership, or the receiver itself, period,
11 end of story.

12 And that is absolutely crystal clear in Hudson, which
13 the FDIC simply ignores.

14 National Union dealt with the question of whether a
15 debtor to the failed financial institution which had brought a
16 declaratory judgment claim against the receiver, was barred
17 under Firrea. And ultimately, in that particular case, the
18 Court actually didn't reach the decision, it simply found that
19 the failure to file proofs of claim barred the debtor's claim.

20 National Union, quite honestly, Judge, is an
21 irrelevant case on the issue before the Court. And, as I say,
22 the answer is clear from Rosa and the later case which is
23 Hudson. Lastly, the only comment I have to finish on is, I
24 didn't realize we would be arguing the motion to withdraw the
25 reference, and I'm not going to respond to the substantive

1 assertions.

2 I just want to make the observation, which I'm sure
3 is not lost on Your Honor, that to file a motion to withdraw
4 the reference at midnight on the night before this hearing, in
5 a case in which you've been a party for months and months, and
6 have filed proofs of claims and your own adversary proceeding,
7 and now to stand up, as they do in their papers and say, Judge,
8 it wasn't until like a week ago that the scales fell from our
9 eyes, and we realized that, you know, the issues we asserted as
10 Chase and the counterclaims that you asserted and the turnover
11 proceeding, it just struck us that these are all bound up in
12 Federal law, so let's withdraw the reference.

13 To me, this was the most transparent gamesmanship
14 that I've seen in a while, and it just reflects, (a) their lack
15 of conviction in their arguments, and, (b) an inexplicable
16 desire to run from this Court and to ultimately bind us up in
17 more, and more, and more delay. Thank you, Judge.

18 THE COURT: Thank you. All right. Well let me issue
19 my ruling with respect to this. First, I do not find Firrea is
20 a jurisdictional bar to the debtors' claims to property that is
21 no longer in the hands of the FDIC as receiver, but are in the
22 hands of JPMC. I think that's clear from the Third Circuit
23 law, which is binding on this Court.

24 Hudson made it clear that Firrea only bars claims
25 against a receiver or an institution in receivership. The FDIC

1 argued this same point in the Henrich case in the Ninth
2 Circuit, arguing before the Supreme Court that Firrea is not
3 applicable to a suit against a private party assignee of assets
4 from FDIC.

5 And I'm not prepared to find that the Firrea bar,
6 bars any claims, or any dispute over what assets were
7 transferred. And I just don't think that, despite the FDIC's
8 predictions, I don't think that it is going to cause
9 institutions not to deal with the FDIC.

10 I think the Firrea jurisdictional bar is limited.
11 And simply is not applicable to the turnover action where the
12 debtor asserts that it has title to funds in the possession of
13 JPMC.

14 Similarly, to the extent in the counterclaims in the
15 JPMC adversary, the debtor is asserting a claim against JPMC to
16 assets that the debtor claims are property of the estate, for
17 various reasons, and I won't get into the legal theories, I
18 think that Firrea does not bar it.

19 With respect to the First Filed Rule, I don't think
20 it applies in this case, either. The two actions are not
21 between the same parties dealing with the same claims.

22 The action in the D.C. Court is between the debtor
23 and the FDIC, and involves claims the debtor has against the
24 FDIC, which it could not bring here, because they must be
25 brought in the D.C. Court.

1 The actions here involve claims against JPMC, which
2 is not an institution in receivership. And while they may be
3 similar, or based on the same facts, they are distinct claims
4 against distinct parties. And, therefore, I'm not inclined,
5 under the First Filed Rule to defer to the D.C. Court.

6 As much as I might wish to defer to another Court,
7 unfortunately, I do have exclusive jurisdiction to decide what
8 is property of the estate. If I determine that the property at
9 issue is property of the estate, then this Court has exclusive
10 jurisdiction over that property, and over claims,
11 counterclaims, other claims against the estate.

12 If I determined it is not property of the estate, I
13 may, in my discretion, defer to the District Court, or to any
14 other Court to decide the countervailing claims to that
15 property. But I think, in the first instance, I have to decide
16 whether what the debtors are asserting is that they own the
17 property, or whether the debtors simply assert a claim against
18 a party.

19 So I'm going to deny the motion to stay the turnover
20 action and the JPMC actions. I guess we have to then go onto
21 what's next.

22 MR. CLARKE: Your Honor --

23 THE COURT: Yes.

24 MR. CLARKE: -- my name's John Clarke, I'm Mr.
25 Califano's partner from DLA Piper, counsel for the FDIC

1 receiver.

2 THE COURT: Yes.

3 MR. CLARKE: The FDIC receiver believes that Your
4 Honor's ruling implicates subject matter jurisdiction concerns
5 and is appealable as of right. But in the alternative, the
6 FDIC receiver respectfully requests that the Court certify this
7 ruling for an interlocutory appeal pursuant to 1292(b), because
8 it involves a controlling question of law as to a substantial
9 disagreement may exist.

10 And we would like to take an immediate appeal of that
11 decision to the District Court.

12 THE COURT: Response?

13 MR. CARLINSKY: Your Honor, I would think that if
14 there is a 1292 motion being brought, it ought to be briefed.
15 I'm just stating that there is a significant issue as to which
16 there is disagreement doesn't make it so.

17 And I would respectfully ask that Your Honor setup a
18 briefing schedule. It may be expedited, and we don't have
19 objection to that, but let's do it right. And let's do it
20 right, and let's do it on the papers. And my suggestion would
21 be, if they want to file the brief, we'll take 5 days to
22 respond, and then Your Honor could decide that issue, whether
23 it's going -- whether the Court's going to certify the issue
24 for immediate appeal.

25 MR. CLARKE: Your Honor, if I might be heard in that

1 regard. If it's the Court's preference to review papers on the
2 issue we would be -- we would be happy to submit briefs on the
3 question of whether this is a controlling question of law as to
4 which there's a substantial ground for difference of opinion.

5 However, Your Honor, for reasons that have already
6 been set forth in our reply brief in this matter, National
7 Union, respectfully, governs the question of whether the
8 jurisdictional apply -- the bar applies in an action that seeks
9 to determine rights with respect to assets of the receivership.

10 In National Union, the Court limited Rosa very
11 expressly.

12 THE COURT: Well I'm not going to hear argument. I
13 will allow the parties, I think nothing that would prejudice
14 the parties is going to occur, even in addressing the following
15 motions. So I will allow the parties to brief the issue.

16 MR. CLARKE: Thank you, Your Honor. We would be
17 prepared to submit a brief within 7 days, if the debtors would
18 be willing to abide by a similar schedule.

19 THE COURT: All right.

20 MR. CARLINSKY: That sounds fine, Your Honor.

21 THE COURT: All right.

22 MR. CARLINSKY: That's reasonable.

23 MR. KIRPALANI: Good afternoon, Your Honor. Susheel
24 Kirpalani, again, from Quinn, Emanuel on behalf of Washington
25 Mutual. Your Honor, I'd like to argue our motion for

1 reconsideration of Your Honor's permitting JPMorgan Chase to
2 have its motion to dismiss heard, frankly, prior to our motion
3 for summary judgment. And as Your Honor knows, we were in the
4 middle of drafting our opposition to JPMorgan Chase's expedited
5 motion when the order was entered.

6 And I don't think that anybody's saying we sat on our
7 rights. I think it was just a question of two days was what we
8 needed to file our papers. I think, Your Honor, the issue
9 comes down to a pretty simple one, and I'm not going to spend
10 too much time going through what I know Your Honor knows from
11 the Lexington Insurance case, which is, upon a motion to
12 dismiss a turnover action on the basis at 542(b) is susceptible
13 to a judicial gloss that says, a disputed contract right, or a
14 disputed debt doesn't fall within 542(b), that those cases that
15 deal with the issue, there must actually be a bonafide dispute,
16 a legitimate dispute.

17 And what JPMorgan Chase is doing instead, is asking
18 Your Honor to close one eye to read just the motion to dismiss
19 and just the complaint and their spin on it, and because they
20 say so, and because they stand up here and they say things
21 like, Ms. Feldenstein (sic) -- Feldstein said, that, Your
22 Honor, WMI was a holding company of a bank that was -- two
23 banks that were regulatory deposit institutions, and,
24 therefore, they're susceptible to all sorts of interesting
25 Federal laws, etcetera.

1 Ultimately, Your Honor, there's been no fact
2 whatsoever as to a dispute as to the debt.

3 And I think, what was really driving me nuts sitting
4 through the argument, Your Honor, is, if Your Honor employs the
5 analysis that you did in Lexington Insurance, or if you do the
6 analysis that Judge Walsh has done in several decisions, or
7 Judge Farnan, as well, in looking at turnover actions and
8 whether or not they are susceptible to motion to dismiss, or
9 whether in fact that motion to dismiss is tantamount to a
10 motion for summary judgment.

11 Because you will look at the circumstances. I think
12 Your Honor just needs to look at the single account statement
13 that JPMorgan has been sending the debtors since the bankruptcy
14 filing.

15 And if Your Honor, if I could just approach, because
16 I think it's germane, and it's really the document, it's one
17 piece of paper that --

18 THE COURT: Well is it attached to your complaint?

19 MR. KIRPALANI: It is attached to our motion for
20 summary judgment. It is germane to the complaint. It is the
21 statement that says, this is the debt that's owed, Your Honor.

22 And it's attached to the complaint, as well.

23 THE COURT: Yes. I have that.

24 MR. KIRPALANI: Did you have it?

25 THE COURT: Yes.

1 MR. KIRPALANI: Okay. Your Honor, just looking at
2 page A38, which is exhibit B to Dorian Logan's affidavit, but I
3 know it's also attached to the complaint. It says right there
4 on the top, "Chase, deposit accounts now held by JPMorgan Chase
5 Bank."

6 The statement covers the period March 1st to March
7 31st, 2009. The beginning balance is 3.6 billion dollars, and
8 the ending balance is a little more than 3.6 billion dollars.
9 This is the document, Your Honor, this is not a lease that Your
10 Honor had in Lexington Insurance where there was really a
11 legitimate dispute as to what the security deposit was intended
12 to cover and not intended to cover.

13 Whether the landlord actually had damages claims
14 against the debtor that it would seek to hold those deposits
15 and not turn them over.

16 The only dispute, Your Honor, that anyone has raised
17 with any legitimate --

18 THE COURT: Well now you're arguing your motion for
19 summary judgment, aren't you? Let's talk about whether the
20 standard on a motion to dismiss is the same as the standard for
21 summary judgment. And I don't think it is.

22 MR. KIRPALANI: I think it's extremely close, Your
23 Honor. And I do think that courts have said, and I can
24 summarize those cases, Your Honor, but even Your Honor's
25 decision in Lexington Insurance went outside and looked at --

1 THE COURT: I looked at the lease that was attached
2 to the complaint.

3 MR. KIRPALANI: Well so if Your Honor did the same
4 thing here, there is no dispute, Your Honor, correct?

5 THE COURT: All right. So now you're arguing the
6 motion to dismiss. But let's go back to, are the standards the
7 same? I think they're not. I think with a motion to dismiss,
8 I only look at the complaint.

9 MR. KIRPALANI: Your Honor, I think Your Honor on a
10 Rule 12(b)(6) --

11 THE COURT: I can, but, their motion to dismiss did
12 not include documents outside of the record.

13 MR. KIRPALANI: No, it did not, Your Honor.

14 THE COURT: So --

15 MR. KIRPALANI: But it didn't include anything, other
16 than we believe there's a dispute, Your Honor. And if Your
17 Honor were to hold that a turnover action under 542(b), which
18 the statute simply says it's a matured payable on demand debt,
19 attached to our complaint is a deposit statement saying 3.7
20 billion dollars is on deposit from this debtor. And JPMorgan's
21 counsel can stand up and say, Your Honor, we dispute that that
22 money is actually owed.

23 And the dispute, just to be clear, is two types. One
24 dispute is, we have setoff rights. Well we know that doesn't
25 count. Right, Your Honor, because the statute itself says

1 setoff rights are part of -- it's gone up to the Supreme Court.
2 That's part of a 542(b), so I don't think that's really
3 relevant.

4 We don't have to spend a lot of time on that for the
5 motion to dismiss. The other one is, there could be something
6 in the way that the accounts were setup.

7 THE COURT: Now you're arguing the motion to dismiss,
8 again. I want you to focus on, aren't they two different
9 standards.

10 MR. KIRPALANI: I think -- well I think, Your Honor,
11 the standard for determining whether or not our complaint
12 satisfies a turnover action, should be limited to what the
13 complaint says.

14 THE COURT: Agreed.

15 MR. KIRPALANI: The complaint does not deviate from
16 the statement that there is a mature, payable on demand,
17 deposit. And the account statements indicate that there is a
18 mature, payable on demand, deposit.

19 And those statements have been sent to the debtor
20 since the beginning. And when we tried to use our ATM card,
21 JPMorgan Chase said, no, not for you.

22 THE COURT: That would be a lot of 20 dollar bills,
23 wouldn't it.

24 MR. KIRPALANI: We'll take it, Your Honor. All
25 right. So I think that ends the analysis with respect to

1 whether or not what they have filed can be sustained as a
2 motion to dismiss. If Your Honor were to take any kind of
3 credit, or give credence to any of the statements of JPMorgan
4 Chase that the way the account was setup, which are unsworn
5 statements of counsel in a brief, no business person, even
6 though they've had several months to try to find that business
7 person, and they employ every single one of them, except Dorian
8 Logan, nobody wants to come forward and swear before Your Honor
9 that there's actually a legitimate dispute.

10 There's no dispute, Your Honor. Even the proof of
11 claim that JPMorgan Chase filed in this Court says, the tax
12 refund payments that were paid post-petition went to WMI's
13 account. That's one of the accounts, Your Honor, that we're
14 talking about.

15 There's no dispute that this is a turnover. That's
16 exactly what the Court -- what the Bankruptcy Code contemplated
17 for this type of action. And just to give Your Honor some
18 comfort, I was struggling a couple of days ago with, why is
19 there all this disputing over whether turnover is the right
20 statute, or whether, as Your Honor found in Lexington
21 Insurance, the obligation to pay a contract claim.

22 Why is there a dispute over whether it should be
23 under 542(b), or the others. I went back and I looked at some
24 of the cases from the mid-eighties, as to where all of this
25 came from.

1 And I think, Your Honor, and Your Honor probably
2 knows this, because Your Honor was practicing at that time, is
3 it's the Marathon Pipeline issue. It started there, Your
4 Honor. And I think it's important, even though it doesn't
5 apply here, because of course JPMorgan filed a proof of claim,
6 40 of them, the FDIC filed a proof of claim. JPMorgan then
7 sued us in this Court.

8 There's no question that Your Honor has jurisdiction
9 over these issues. There's no question, this is not a case
10 where a debtor is trying to find a disputed accounts
11 receivable, in some location out in Nevada, and say, ah-ha,
12 we've got core jurisdiction, we're going to drag that creditor
13 -- the account debtor, rather, in here, and we're going to try
14 and collect and have Your Honor rule on the issue under 28
15 U.S.C. 157.

16 Your Honor, this is an adversary proceeding. There's
17 no procedural defects with the type of proceeding we're using.
18 This is a turnover. I think the issue's pretty
19 straightforward, Your Honor.

20 THE COURT: Thank you.

21 MR. CLARK: Good afternoon, Your Honor, Bruce Clark
22 for JPMorgan Chase. I'm going to try to deal with the question
23 that Your Honor asked, and try to focus on, which is, are the
24 standards the same or are they different?

25 In their brief on this issue the debtors say it's

1 just two sides of the same coin. I submit that is not the
2 case, and that has been resolved fully by Your Honor, the Third
3 Circuit, and the Seventh Circuit.

4 The Third Circuit in BTW decided which of three
5 different District Court standards they would apply. One out
6 of Hawaii, one out of Colorado, which said it's pretty much the
7 same as summary judgment, which the debtors papers recite to
8 you. And then another case called Lau (phonetic).

9 And what the BTW court did, the Third Circuit did,
10 was say we're going to follow what the Seventh Circuit did in a
11 case called Busik (phonetic). And the Seventh Circuit in Busik
12 analyzed these three different cases, and they came out saying
13 that the right standard is the Lau case.

14 And what they said there was, under the Lau standard,
15 the Bankruptcy Court must determine whether there is an
16 objective basis for either a factual or a legal dispute as to
17 the validity of debt. That's what you cited in the Lexington
18 case. They went on to say, "However, the statute does not
19 require the Court to determine the outcome of any dispute, only
20 its presence or absence. Only a limited analysis of the claims
21 at issue is necessary."

22 In the Lexington case, the plaintiff -- I sort of
23 hesitate to tell you what happened in your own case, but the
24 way I read it, the plaintiff came in and said, I filed a
25 turnover complaint, I didn't say there was a dispute, therefore

1 that's the end of it.

2 And then the defendant came in and put some papers in
3 and pointed to the lease that was attached to the complaint,
4 and said, no, here's this issue and there's that issue. And
5 the plaintiff came back, the debtor came back, the trustee came
6 back and said, well now they've taken it outside a motion to
7 dismiss, you have to treat it as a summary judgment motion.

8 And Your Honor said, that's not right, I can decide
9 short of a summary judgment motion whether or not a motion to
10 dismiss is appropriate. The trustee is wrong, and I go the
11 other way.

12 I'm paraphrasing.

13 THE COURT: Well wasn't it --

14 MR. CLARK: So I'm saying is, they're two different
15 issues.

16 THE COURT: -- wasn't it clear that from the
17 complaint and the attachment to the complaint on the face of
18 the lease there was a dispute as to the security deposit. It
19 did not say trustee debtor gets the security deposit back in
20 every circumstance.

21 MR. CLARK: I think, under the circumstances of that
22 case, where they filed that paper with the complaint, that was
23 among the sources you could look at in reaching the decision
24 about which standard to apply. Just as, in this case, you can
25 look at the papers that have been filed and the claims that

1 have been made, you're entirely permitted to do that. And
2 understand what this is about.

3 This isn't about accounts. If, at the end of the
4 day, we have at JPMorgan Chase 6 accounts, the debtors could
5 care less. It's about the money. It's about the funds. And
6 there are very substantial issues about millions of dollars,
7 maybe all of it. Maybe all of the 3.6 billion. And you're
8 entitled, in fact I think you're required to look at what the
9 disputes are that have been raised by various parties in the
10 pleadings that are before you, either directly in your Court or
11 by way of exhibits to the papers that have been filed.

12 And to say that, in this midnight raid, that there
13 was a 3.67 billion dollar transfer on paper, not a penny moved,
14 immediately after the OTS came in and said, you folks have a
15 liquidity problem, we're worried about your safety and
16 soundness, then a day or two later they say, well we can't move
17 the funds, we're going to leave them right there, but we're
18 going to setup paper that says, we're transferring the money
19 from one bank to the other, and then we're going to loan it
20 back to the bank that the OTS says they're worried about.

21 And they come in and say, there's no dispute, there's
22 no issue. This is the only circumstance anybody would try to
23 say that you've got a 3.7 billion dollar issue, and you don't
24 have to look at the facts.

25 THE COURT: Well, in a motion to dismiss, I am

1 limited to the facts as stated in the complaint, though, aren't
2 I?

3 MR. CLARK: I believe you're also entitled in a
4 turnover action to look at the materials that are available to
5 you to determine whether or not there is a dispute. I mean,
6 what Your Honor is positing -- suppose in the Lexington case
7 the trustee had come in and said, I want this property, I'm
8 entitled to it, there's no dispute about it.

9 I think your question assumes that would be the end
10 of it, and I think that's not correct. I believe you are
11 entitled to, in fact I think you must, look at the facts that
12 are in the area that you can explore, without turning it into a
13 motion for summary judgment. And that includes the papers
14 filed by the FDIC. The papers filed by the debtors themselves,
15 where they call these assets disputed assets.

16 THE COURT: Well if I'm going to look at any facts
17 outside of the four corners of the complaint, don't I have to
18 look at all of them? And doesn't that convert it to a motion
19 for summary judgment?

20 MR. CLARK: No. Because the difference is between
21 deciding whether or not there is a dispute and resolving the
22 issue on the merits, we are not saying in moving to dismiss the
23 turnover action, that on the merits the rights to those monies
24 are going to be decided in that decision.

25 That has to be decided somewhere, we thought D.C.,

1 Your Honor disagrees, but it's got to be decided somewhere, but
2 not on a turnover action.

3 The turnover action issue was whether or not there is
4 a dispute, and there are so many papers before you where the
5 debtors have admitted there's a dispute, where the FDIC has
6 claimed the funds, it's -- even the bond holders at the bank
7 level have put in papers saying that this had to be a
8 fraudulent conveyance, that this had to be a violation of
9 banking law. To take 3.7 billion out of one bank and move it
10 to another.

11 THE COURT: But see, even if I go to those facts,
12 those facts don't deal with the title which a turnover deals
13 with. Title to property, they don't contest that the title is
14 in the name of the debtor. There may be claims for fraudulent
15 conveyance, or other improper actions by the debtor, but they
16 don't even go to title.

17 There's not, for example, anything in the motion to
18 dismiss to suggest that, on the face of the bank statement it's
19 clear there's a dispute as to who is the deposit account
20 holder.

21 MR. CLARK: That bank statement is one piece of
22 paper.

23 THE COURT: Yes.

24 MR. CLARK: One piece of evidence that they're
25 entitled to use to the extent that the laws of evidence permit

1 it, when the ultimate issue is to be decided. It has nothing
2 to do with deciding whether or not a turnover action is
3 appropriate.

4 What they're claiming, what they want you to decide,
5 are issues about the funds that are in those accounts. And
6 they want to do it by way of turnover, without the FDIC,
7 without the receivership, just them and JPMorgan.

8 And they want to make it as simple as they can,
9 that's why they went through the turnover procedure.

10 THE COURT: Yes.

11 MR. CLARK: That is not permitted in these
12 circumstances, where you have so many disputes of such
13 importance. And all you're deciding on the motion to dismiss
14 is that that's the wrong procedure. You can't use the turnover
15 procedure to do it.

16 And I believe that's what the law requires.

17 THE COURT: Well turnover procedure, you say it's
18 simple. It does not preclude arguments regarding entitlement
19 to that property.

20 MR. CLARK: Well if there is --

21 THE COURT: I'm not deciding by dealing with a motion
22 to dismiss that in fact the debtor has title to that property
23 and is entitled to it under 542. I'm only, in a motion to
24 dismiss, to look and see if there is facially a dispute as to
25 title.

1 MR. CLARK: And, Your Honor, I submit you can't
2 conclude otherwise, when you look at what has been put before
3 your Court in connection with these proceedings relating to
4 those various accounts and the money in them. I mean --

5 THE COURT: But in a motion to dismiss --

6 MR. CLARK: Yes.

7 THE COURT: -- think I'm precluded from considering
8 other things.

9 MR. CLARK: You see, I think what you're coming back
10 to is how does the Court deal with a question on a motion to
11 dismiss about whether or not there's a dispute? And you're
12 saying in effect, if the plaintiff comes in and says, there is
13 no dispute, their complaint says in a couple of places, no,
14 there's no dispute we get the money.

15 THE COURT: And there is no facial dispute, then, no,
16 I don't say they get the money, I say I deny your motion to
17 dismiss and we'll have a full evidentiary hearing, or motion
18 for summary judgment to decide if in fact, notwithstanding the
19 four corners of the complaint, who has title to that property.

20 MR. CLARKE: I submit, Your Honor, you don't get that
21 far when the disputes are as patent as they are here. Because
22 if there's a dispute, there's a line a mile long of cases that
23 say that you don't use 542, and your case is one of them.

24 THE COURT: But where in the depository account
25 documentation or the complaint is the dispute evident?

1 MR. CLARK: It doesn't have to be just in the
2 complaint, that's what I'm saying.

3 THE COURT: Where is it? Where is it?

4 MR. CLARK: All right. JPMC, the bank itself has
5 filed a claim specifically to 234 million dollars in tax
6 refunds that were put into these accounts post-petition. They
7 are tax refunds which are property, were property of WMB and
8 were sold to JPMC.

9 We have reason to believe there are millions of
10 dollars in addition to that. That's one specific transaction,
11 one transfer we know about.

12 THE COURT: All right. Let's talk about it. You
13 filed a proof of claim that says that. But that deals, again,
14 not with title to the deposit account. It deals with what is
15 in that.

16 MR. CLARK: Which is what we're fighting about. I
17 mean, if it were simply title to the deposit account without
18 any funds being transferred because of title, which is not what
19 they want --

20 THE COURT: Well let's talk about --

21 MR. CLARK: -- I mean, obviously it's the money.

22 THE COURT: Let me give you an example. Title to
23 real estate is in the debtor's name, and the debtor files, you
24 know, a turnover action because possession is in somebody
25 else's name.

1 Do I dismiss that because the person in possession
2 says, well, wait a minute, title, you know, was fraudulently
3 conveyed to the debtor, and you can't use a turnover action to
4 do that, you've got to look at the underlying things. Dismiss
5 this adversary.

6 MR. CLARK: You would dismiss the turnover if there
7 was a legitimate dispute along the lines you're describing.

8 THE COURT: But, again, on a motion to dismiss, I'm
9 limited to what the complaint says, aren't I?

10 MR. CLARK: I don't believe that's true when you're
11 talking about materials that are in the Court's files of which
12 you can take judicial notice, which raise the disputes, the
13 legitimate disputes to these amounts. And they are not just
14 JPMorgan claims, they are claims that were raised by the FDIC
15 and by the bond holders at the bank level with regard to
16 potential fraudulent conveyance claims.

17 I mean, the way this money -- strike money, the money
18 was not moved, the way the paper was moved in the days before
19 their receivership, has got to open up a host of questions
20 about whether or not that was valid.

21 About whether any transfer that can be upheld
22 occurred. It's remarkable that --

23 THE COURT: But your putting it in a pleading and
24 saying that this is what happened, is not enough.

25 MR. CLARK: It's --

1 THE COURT: Otherwise, there could never be a
2 turnover action.

3 MR. CLARK: It's enough to show -- it's enough to
4 show that there's a dispute, a legitimate dispute.

5 THE COURT: If that were enough, there could never be
6 a turnover action.

7 MR. CLARK: Well, I mean, people have got to be able
8 to sustain what they have in these pleadings that they put in.

9 THE COURT: But I'm not going to have an evidentiary
10 hearing to determine whether you're correct, or the debtors are
11 correct as to the source of those monies.

12 MR. CLARK: Nor should you. Because of the existence
13 of the dispute, you should require them not to use Section 542
14 for whatever claim they have.

15 Because turnover only applies when there's no dispute
16 and you can't be limited --

17 THE COURT: But, no, then every turnover -- there
18 would never be a turnover. If there were no dispute the debtor
19 would not have to file a lawsuit.

20 MR. CLARK: I think what Your Honor is saying is the
21 converse of that. If they come in and they file a pleading
22 that says there is no dispute, then they get to have a turnover
23 action.

24 THE COURT: No, unless on the face of their claim
25 there appears to be a dispute. They cannot, for example, come

1 in and claim title to property where it says it's in the name
2 of the debtor and somebody else. They can't come in and say --
3 claim we have sole title to that property.

4 If on the face of their claim the dispute is evident,
5 I think turnover is not applicable.

6 MR. CLARK: Your Honor, what -- I think I'm back to
7 saying the same thing, that if in fact they plead purely, so
8 that there is nothing that they follow up with in the
9 complaint, they don't make a mistake and say, by the way,
10 there's another claim over here, then they get to pursue their
11 turnover proceeding.

12 I mean, in the D.C. action, in the complaint that
13 they filed, they said they acknowledged, I think it was
14 paragraph 168, they said, we understand that both JPMC and the
15 FDIC have claims that they may file, that they may pursue with
16 regard to the deposit accounts.

17 And, therefore, we are filing this particular section
18 of our complaint to resolve that dispute. That's what they
19 said in Federal Court in D.C. And what Your Honor's saying is,
20 I just can't take any account of that.

21 And I don't think that's the rule.

22 THE COURT: In deciding whether a turnover action is
23 appropriate.

24 MR. CLARK: Yes.

25 THE COURT: Certainly on the merits of who has actual

1 title to the deposit account, that is relevant.

2 MR. CLARK: I think it's relevant on the turnover
3 procedure, as well. Because if it's that clear that there's a
4 dispute here, then I think Your Honor should require them not
5 to use a turnover procedure, but to follow other procedures.

6 THE COURT: All right. Did I interrupt, and did you
7 have more?

8 MR. CLARK: I think, you know, I tried to only do the
9 standards question, but, Your Honor and I, between us, got onto
10 the merits of dismissal, as well.

11 THE COURT: That's all right. The other side did, as
12 well.

13 MR. CLARK: Thank you.

14 THE COURT: Anybody else on that? Any reply? Well,
15 let me do this, I am going to deny the motion to reconsider,
16 because I think they are two different standards. The standard
17 to dismiss must only look at the four corners of the complaint
18 and attachments, while summary judgment, obviously, can
19 consider matters outside the complaint.

20 So I think it is appropriate to deal with the motion
21 to dismiss first, rather than together with the debtors' motion
22 for summary judgment. However, I will deny the motion to
23 dismiss the complaint, because I think that in deciding such a
24 motion, even of a turnover action, I'm limited to the four
25 corners of the complaint and its attachment.

1 And it is not evidence from this -- the complaint and
2 the attachments that there's any dispute as to the title to the
3 account -- excuse me, deposit accounts. Obviously, I'm not
4 deciding a disputed issue, and that may be disputed by the
5 filing of an answer. I think I can predict that.

6 But this is different from the Lexington Healthcare
7 case, where the dispute was evident from the debtor's complaint
8 and attachments. It is not simply enough to say there is a
9 dispute to preclude a turnover action. Otherwise, there could
10 never be a turnover action.

11 So I will, as I say, deny the motion to dismiss the
12 complaint.

13 MR. ROSEN: Your Honor, if I may, can we prepare four
14 very simple orders based upon the record and send those to
15 opposing counsel and to the Court?

16 THE COURT: You may.

17 MR. ROSEN: Thank you.

18 THE COURT: I think we're done today.

19 MR. CARLINSKY: The one additional issue, Your Honor,
20 is in light of the motion to dismiss being denied, do we need a
21 schedule for the opposition on the summary judgment motion,
22 which is currently an open motion?

23 THE COURT: Yes.

24 MR. CARLINSKY: We can work that out --

25 THE COURT: Why don't you work that out. I think --

1 yes.

2 MR. CARLINSKY: Yes, Your Honor.

3 THE COURT: And just also to let the parties know, I
4 do have the matter of the 2004 under advisement, and I expect
5 to issue a ruling today.

6 We'll stand adjourned.

7 (Court adjourned)

8 * * * * *

9 C E R T I F I C A T I O N

10 I, Josette Jones, court approved transcriber, certify that the
11 foregoing is a correct transcript from the official electronic
12 sound recording of the proceedings in the above-entitled
13 matter.

14 **Josette
Jones**

Digitally signed by Josette Jones
DN: CN = Josette Jones, C = US
Date: 2009.06.29 13:11:25 -
04'00'

15 -----

16 JOSETTE JONES

DATE

17 DIANA DOMAN TRANSCRIBING

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----	x	
<i>In re</i>	:	
	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> ¹	:	
	:	Case No. 08-12229 (MFW)
Debtors.	:	
	:	Jointly Administered
-----	x	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
	:	Adv. Proc. No. 09-50934
Plaintiffs,	:	
	:	
v.	:	Oral Argument Requested
	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Defendant.	:	
-----	x	

**MOTION OF PLAINTIFFS WASHINGTON MUTUAL, INC. AND WMI
INVESTMENT CORP. FOR SUMMARY JUDGMENT**

Plaintiffs Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and with WMI, "Plaintiffs" or "Debtors"), by and through undersigned counsel, hereby move this Court, pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395).

Bankruptcy Procedure 7056 for an Order, in the form attached hereto as Exhibit A, granting Summary Judgment in this Adversary Proceeding in favor of the Plaintiffs.

Dated: May 19, 2009
Wilmington, Delaware

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Washington Mutual, Inc. and WMI Investment Corp*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----	x	
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <i>et al.</i> ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
-----	x	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
	:	
Plaintiffs,	:	Adv. Proc. No. 09-50934
	:	
v.	:	
	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Defendant.	x	

**BRIEF IN SUPPORT OF THE MOTION OF PLAINTIFFS
FOR SUMMARY JUDGMENT**

Plaintiffs Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMI Investment,” and with WMI, “Plaintiffs” or “Debtors”), submit this brief in support of their Motion for Summary Judgment under Federal Rule of Civil Procedure 56, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056.

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor’s federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395).

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PRELIMINARY STATEMENT

JPMorgan Chase Bank, N.A. (“JPMC”) has refused to pay the Debtors more than \$4 billion in deposits that belong to the Debtors, thereby depriving the bankruptcy estates of one of their most valuable assets. As there is no factual or legal justification for JPMC’s refusal to pay, it appears that JPMC is holding onto these deposits for as long as possible so that it can unjustly profit from the use of the capital. This is a palpably improper basis for depriving the Debtors (and their creditors) of more than \$4 billion that rightfully belongs to their estates, and Plaintiffs have therefore brought this action in order to secure the prompt return of these funds. Moreover, because the specific issue of the Debtors’ rights to these monies is clear and indisputable, the Debtors respectfully move for summary judgment to obtain an Order requiring JPMC immediately to turn over those monies to the Debtors so that they can be returned to the estates and be distributed in connection with a chapter 11 plan.

On May 13, 2009, JPMC filed its motion to dismiss this action or, in the alternative, to consolidate it with JPMC’s earlier-filed adversary proceeding. As the Debtors will demonstrate in their opposition to that motion, which is due to be filed with the Court on May 27, JPMC’s arguments are without merit. Furthermore, even if JPMC were correct that the deposit accounts cannot be addressed through a turnover action, all of the arguments herein would apply equally as a basis for a grant of partial summary judgment in favor of the Debtors in the pending adversary proceeding. Thus, whether through these proceedings or through the pending adversary proceeding, the Debtors are plainly entitled to their deposits, and JPMC, despite all of its various court filings, has yet to assert any legitimate claim to those funds.

SUMMARY OF ARGUMENT

JPMC is holding in excess of \$4 billion of cash in deposit accounts that WMI and WMI Investment held at the Debtors' former subsidiary banks, Washington Mutual Bank ("WMB") and Washington Mutual Bank fsb ("WMB fsb," and collectively with WMB "the Banks"). The fact that those accounts are deposit accounts, and therefore estate property, is beyond any genuine dispute based on extensive indisputable evidence including, among other things, the Banks' books and records (both before and after JPMC's purchase of certain of WMB's assets), the account statements that JPMC continues to issue in the name of WMI and WMI Investment, and JPMC's own representations subsequent to the filing of the Debtors' bankruptcy cases. The testimonial evidence is equally compelling in establishing that the monies at issue at all times have been held in demand deposit accounts for the benefit of the Debtors. Because the indisputable evidence, as detailed below, demonstrates clearly that there are no genuine issues of material fact, the Debtors are entitled to the funds that they have on deposit with JPMC, and JPMC is required under the turnover provision of the Bankruptcy Code, 11 U.S.C. § 542, to pay these liabilities, along with pre-judgment interest, to the Debtors without delay.

JPMC attempts to justify withholding the Debtors' funds with the contrived claim that WMI's transfer of \$3.674 billion from a deposit account at WMB to a deposit account at WMB fsb somehow constitutes a capital contribution. This argument is utterly meritless. The very form that personnel used to initiate this transaction is used solely for the purpose of opening new on-us deposit accounts, and it is therefore impossible that the transfer was a capital contribution. Moreover, had WMI actually made a capital contribution to WMB fsb, such a transaction would have involved entirely different accounting entries and procedures and would have required an assortment of internal approvals that were not obtained. Additionally, JPMC itself has repeatedly represented to

WMI, and even to its own federal regulators, that the funds in the WMB fsb account constitute deposit liabilities.

Recognizing that it has no genuine basis to challenge the Debtors' ownership of the funds on deposit, JPMC has invoked putative "setoff" rights as a pretext to retain the Debtors' \$4 billion. JPMC contends that it supposedly is permitted to do so in satisfaction of claims that it allegedly has against WMI based on its acquisition of WMB's assets pursuant to the certain Purchase and Assumption Agreement Whole Bank, dated September 25, 2008 ("P&A Agreement"), entered into between JPMC and the Federal Deposit Insurance Corporation ("FDIC"). For several reasons, however, this argument fails.

First, the plain language of the P&A Agreement specifically provides that JPMC acquired no claims against WMB's "shareholders" or "holding company," both terms squarely describing WMI. Accordingly, JPMC has acquired no claim against which to assert a right of setoff. Second, assuming *arguendo* that JPMC acquired claims against WMI, it would have done so one day before the Debtors' bankruptcy petitions were filed, while WMI was presumptively (and in fact) insolvent. Any claim of setoff, therefore, is expressly barred by a straightforward application of 11 U.S.C. § 553(a)(2)(B), which precludes setoff where a party acquires claims against an insolvent entity within 90 days of the bankruptcy filing.

Furthermore, JPMC cannot invoke any alleged setoff right because there is no mutuality between claims, which must exist before setoff is even theoretically available. For example, a portion of the funds that JPMC is withholding belongs to WMI Investment, but the putative claims that JPMC allegedly holds are against WMI. Thus, JPMC is seeking setoff against monies belonging, at least partially, to WMI Investment for a claim that it allegedly has against a different company. Similarly, JPMC is seeking to withhold \$3.674 billion in a WMB fsb account to offset

claims that it supposedly acquired from WMB – again, a separate entity. These are classic “triangular” setoffs, which are prohibited by the Bankruptcy Code.

In sum, the Debtors placed billions of dollars on deposit that are essential assets of the estates. JPMC should not be permitted to stall and to frustrate further the Debtors’ chapter 11 process by withholding those funds without any legitimate factual or legal basis. The billions of dollars at issue should be immediately turned over to the Debtors so that the estates can make those funds available to creditors. Plaintiffs therefore respectfully request that the Court grant this Motion for Summary Judgment and direct JPMC to turn over the Debtors’ deposits so that the Debtors can move forward with the critical work of administering their estates.

BACKGROUND

A. The Deposit Accounts

On September 25, 2008, the Debtors had cash on deposit with WMB and WMB fsb in excess of \$3.8 billion, consisting of more than \$135 million in five demand deposit accounts at WMB (the “WMB Accounts”) and approximately \$3.668 billion in a single demand deposit account at WMB fsb (the “WMB fsb Account,” and with the WMB Accounts the “Accounts”).² One of the WMB Accounts, holding approximately \$53 million (“Account 4704”), is owned by WMI Investment (*see* A-22—34), and the remaining Accounts are held by WMI. All of the Accounts were listed on the Debtors’ Schedules of Assets and Liabilities filed with this Court.

The Debtors established and maintained each of the Accounts in accordance with their internal policies and procedure governing “On-Us,” or intra-corporate, deposit accounts, as set forth

² These figures are confirmed by the September 2008 “Washington Mutual Internal Checking Detail Information” forms which report monthly balance and transactions for the Accounts (the “Account Statements”). The Account Statements are attached as Exhibit A to the Affidavit submitted in support of this Motion by Doreen Logan (“Logan Aff.”). (A-22—34.)

in the Debtors' "GL Administration Policy." (Logan Aff., A-5 at ¶ 11.) That document "communicate[s] policies for the establishment and usage of 'On-Us' bank accounts for all Washington Mutual entities and departments," and separately defines "'On-Us' accounts" as "corporately owned Demand Deposit Account (DDA) accounts." (A-42—45.) Each of the Accounts was accounted for in the books and records of WMB or WMB fsb as demand deposit accounts with deposit liabilities owing to either WMI or WMI Investment, as appropriate. (Logan Aff., A-5 at ¶ 12.)

B. WMI Transfers Funds Between Deposit Accounts

WMI's long-time primary checking account at WMB ("Account 0667") was used by WMI to service its outstanding debt, to pay dividends on its preferred and common equity, and to disburse payments on account of tax obligations and myriad other operating expenses. (Logan Aff., A-4 at ¶ 10.) Account 0667 was WMI's primary non-interest bearing checking account and, therefore, was very active and typically had approximately 10 to 15 transactions per day. (*e.g.*, A-22—34.) On or about September 18, 2008, WMI determined that it would transfer its primary checking account from its direct wholly-owned subsidiary, WMB, to its indirect subsidiary, WMB fsb. (Logan Aff., A-5 at ¶ 13.) Ms. Doreen Logan, whose affidavit is attached, served as a First Vice President and transaction manager in WMB's Treasury Department during this period and played a central role in that transaction. (Logan Aff., A-2 at ¶ 2; A-5 at ¶ 13 through A-10 at ¶ 26.)

As was customary with any transfer to a newly-established deposit account, this transfer was to be effectuated by submitting a "New Account Request Form," utilized to open a new demand deposit account at either Bank, and by completing a "Journal Entry Request Form" and "Journal Entry Posting Form" to account for the transfer of deposits from Account 0667 to a new account at WMB fsb. (Logan Aff., A-6 at ¶ 16.) Although the New Account Request Form properly indicated

that a new account was to be opened at WMB fsb (designated on the form as “Company 40”), an administrative processing error caused a new account to be opened at WMB (Account No. xxx-xxx421-8, “Account 4218”). (Logan Aff., A-8 at ¶ 20; A-77—81.) Thus, \$3.674 billion in deposits, rather than being transferred directly to an account at WMB fsb as planned, apparently was initially transferred to Account 4218 and remained at WMB.

On September 22, 2008, a revised New Account Request Form was created and the mistake was corrected, retroactively to September 19, 2008, with the creation of Account 4234 at WMB fsb. (Logan Aff., A-9 at ¶ 22.) Thus, \$3.674 billion in deposits, as initially intended, was transferred from Account 0667, a WMB deposit account, to Account 4234, a WMB fsb deposit account.³ This is reflected in the September 2008 Account Statement for Account 0667, which shows an opening balance of \$4.541 billion with four debits on September 19, 2008 in an aggregate amount of \$3.674 billion. (A-22—34.) The September 2008 Account Statement for Account 4234 at WMB fsb shows four corresponding deposits, effective September 19, 2008, in an aggregate amount of \$3.674 billion. (A-22—34.)

The transfer of WMI’s deposits from WMB to WMB fsb did not change the nature of those deposits. The Initial and Revised Account Request Forms prepared to establish Account 4218 and Account 4234, respectively, state expressly that the new account was to be an “On-Us” corporate checking account to be assigned a product code of “B3.” (A-77—81; A-92—95.) The GL Administration Policy provides that “B3’s are non-interest bearing DDA accounts,” and makes clear that “DDA” is an abbreviation that signals a Demand Deposit Account. (A-42—45.) The GL Administration Policy likewise provides that “On-Us” accounts are “Demand Deposit Accounts.” (*Id.*) Moreover, the Journal Entry Posting Forms used to account for the transfer of funds from

³ Account 4218 was closed while Account 0667 remains an account at WMB.

Account 4218 to Account 4234 denote that Account 4234 was to be a “DDA” account. (A-92—95.) In addition, the September 2008 Account Statement for Account 4234, issued by JPMC and evincing the \$3.674 billion transfer, properly reflects such amounts as “Customer Deposits.” (A-22—34.)

C. JPMC’s Acquisition of WMB and Assumption of the Deposit Liabilities

On September 25, 2008, substantially all the assets of WMB, including the stock of its subsidiary WMB fsb, were sold to JPMC for the purchase price of \$1.88 billion, pursuant to the P&A Agreement (A-163—205 (“P&A Agreement”), § 3.1). Pursuant to Section 2.1 of the P&A Agreement, JPMC “expressly assumes . . . and agrees to pay, perform, and discharge, all of the liabilities of [WMB] . . . including the Assumed Deposits” (P&A Agreement § 2.1). According to the P&A Agreement, “Assumed Deposits” is defined to mean “Deposits” which would, of course, include any WMB Deposits, subject only to two inapplicable exceptions. (P&A Agreement, Article I, Definitions.) Further, under section 5.1 of the P&A Agreement, JPMC agreed to “pay all properly drawn checks, drafts and withdrawal orders of depositors . . . to the extent that the Deposit balances to the credit of the respective makers or drawers . . . are sufficient to permit payment thereof” (P&A Agreement § 5.1). Thus, the P&A Agreement is clear that JPMC unambiguously assumed liability for all deposits, including the deposits in the WMB Accounts.⁴

Since consummation of the P&A Transaction, JPMC continues to issue Account Statements to the Debtors for all six Accounts with the following disclosure at the top of each page: “Deposit accounts now held by JPMorgan Chase Bank, N.A.” (A-34—41.) It also appears that JPMC continues both to report the deposits in the Accounts as deposit liabilities to the Office of

⁴ Under the P&A Agreement, WMB fsb became the wholly-owned subsidiary of JPMC. (P&A Agreement § 3.1). As a result of the subsequent merger of JPMC and WMB fsb, JPMC purportedly assumed all deposit liabilities of WMB fsb, including with respect to WMI as depositor of the WMB fsb Account (*i.e.*, Account 4234).

Comptroller of Currency (“OCC”) and to pay to the FDIC federal deposit insurance premiums in respect of these deposits (as it does for all of its deposit liabilities). (Logan Aff., A-19 at ¶ 46; A-20 at ¶ 47.) Furthermore, in a proof of claim filed in the Chapter 11 Cases concerning certain federal tax refunds that the IRS wired to one of the Accounts post-petition, JPMC stated that “[o]n September 30, 2008, the IRS wired the [tax refunds] to WMI.” The fact that these funds were wired “to WMI,” as JPMC acknowledges, of course means that the Account belongs to WMI. (March 30, 2009, Proof of Claim by JPMC, at 17 (emphasis added).)

The P&A Transaction was extremely profitable for JPMC. In January 2009, JPMC announced that it had realized a \$1.3 billion after tax extraordinary gain from “merger-related items” in connection with the P&A Transaction. (JPMC Press Release, *JPMorgan Chase Reports Full-Year 2008 Net Income of \$5.6 Billion, or \$1.37 per Share, on Revenue of \$67.3 Billion; Fourth-Quarter 2008 Net Income of \$702 Million, or \$0.07 per Share*, Jan 15, 2009). In April 2009, JPMC announced that its acquisition of WMB contributed to (i) net income in JPMC’s Retail Financial Services division of “\$474 million, compared with a net loss of \$311 million in the prior year,” (ii) net income in JPMC’s Commercial Banking division of “\$338 million, an increase of \$46 million, or 16%, from the prior year,” and (iii) “[n]et interest income [at JPMC of] \$15.5 billion, up by \$6.1 billion, or 65%.” (See JPMC Press Release, *JPMorgan Chase Reports First-Quarter 2009 Net Income of \$2.1 Billion, or \$0.40 per Share*, April 16, 2009.) Having acquired WMB and WMB fsb at fire-sale prices, JPMC has achieved “record firm-wide revenue” in first quarter 2009 (*id.*), and it is now seeking to increase its windfall by misappropriating \$4 billion that belongs to the Debtors.

D. JPMC Has Repeatedly Refused To Release The Debtors’ Funds

On numerous occasions, the Debtors have requested that JPMC turn over control of the Accounts to the Debtors, but JPMC has refused to do so, or has imposed unreasonable conditions on doing so, thereby denying the Debtors’ estates use of their deposits. On October 14, 2008, JPMC

entered into a stipulation acknowledging that the accounts are deposit accounts under the Debtors' control, but this was ultimately withdrawn, on January 26, 2009, when JPMC would not agree to a form of order approving it. On December 19, 2008, after several weeks of negotiations, JPMC agreed to allow interest to accrue on the deposits, but only at a nominal rate. Thus, every day that JPMC continues to withhold the deposits, realizing an economic advantage while enjoying increased liquidity, the Debtors' estates suffer further damage because their deposits are earning interest at a significant discount to a market rate and the estates' assets are not being maximized.

ARGUMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding under Rule 7056 of the Federal Rules of Bankruptcy Procedure, a claimant may file for summary judgment "at any time after [] 20 days have passed from commencement of the action." Fed. R. Civ. P. 56(a)(1); *see also In re First Interregional Advisors Corp.*, 271 B.R. 463, 468-69 (Bankr. D.N.J. 2001) ("The purpose of summary judgment is to avoid a trial which is unnecessary and results in delay and expense, by promptly disposing of any actions in which there is no genuine issue of material fact."). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Levy v. Sterling Holding Co., LLC*, 544 F.3d 493, 501 (3d Cir. 2008) (quoting Fed. R. Civ. P. 56(c)); *see also In re Tops Appliance City, Inc.*, 372 F.3d 510, 513 (3d Cir. 2004).

POINT I

THE ACCOUNTS ARE DEPOSIT ACCOUNTS BELONGING TO THE DEBTORS

Section 542 of the Bankruptcy Code provides that any entity that “owes a debt that is property of the estate . . . shall pay such debt” to the trustee except to the extent that such debt “may be offset under section 553.” 11 U.S.C. § 542(b). A debtor’s bank deposits, which constitute a debt owed by the bank to the debtor, constitute estate property. *See In re Meadows*, 396 B.R. 485, 490 (B.A.P. 6th Cir. 2008) (“[T]he Debtor’s checking account and all monies contained therein became ‘property of the estate’ once her bankruptcy case was commenced.”); *In re Rock Rubber & Supply of CT, Inc.*, 345 B.R. 37, 40 (Bankr. D. Conn. 2006) (“The court concludes that the trustee’s letter correctly asserted that the [deposit] accounts were property of the bankruptcy estate.”); *In re Tarbuck*, 318 B.R. 78 (Bankr. W.D. Pa. 2004) (holding that money that Chapter 7 debtor had placed into depository account was “property of the estate”); *see also Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 21 (1995) (observing that a bank account “consists of nothing more or less than a promise to pay, from the bank to the depositor”). Accordingly, absent a legitimate claim of setoff, amounts held by a debtor in a deposit account are subject to turnover under section 542.⁵ *See In re Mills*, 167 B.R. 663, 664 (Bankr. D. Kan. 1994) (“When the debtor filed his bankruptcy petition, his credit union deposit account became property of the estate pursuant to § 541(a), and the credit union became obliged to turn the account balance over to the trustee pursuant to § 542.”); *see also In re Buffington*, 100 B.R. 448, 450 (N.D. Iowa 1987) (“This account must be treated like any other

⁵ As set forth at Point II, *infra*, JPMC cannot meet the requirements for asserting setoff under section 553.

deposit account the Debtor may have had at a bank As property of the estate, these funds shall be turned over to the Trustee.”).

JPMC has sought to avoid this result and retain the Debtors’ funds by making the meritless suggestion that the \$3.674 billion transferred by WMI into Account 4234 at WMB fsb was a capital contribution, rather than a transfer from one deposit account to another. As set forth below, however, this argument fails. It is crystal clear and beyond genuine dispute that all of the accounts, including Account 4234, are deposit accounts.

A. The Accounts Are Deposit Accounts Belonging To WMI

The only account that JPMC has attempted to call into question is Account 4234.⁶ The indisputable evidence, however, confirms that this Account is in fact a deposit account. This is clear from the procedure used to transfer the \$3.674 billion into Account 4234; from the books and records maintained by not only WMB fsb, but also by JPMC itself; and from the correspondence by the personnel directly involved in creating Account 4234. *See In re Radnor Holdings Corp.*, 353 B.R. 820, 838 (Bankr. D. Del. 2006) (holding that disputed loans were “true debt instruments” based on “the terms of the documents themselves, the facts and circumstances surrounding the making of the loans, the reasonable inferences to be drawn therefrom, as well as the economic reality of the circumstances”).

On September 18, 2008, in order to address concerns regarding WMB’s liquidity, WMI senior management directed treasury personnel to transfer the maximum available funds from Account 0667, a long standing deposit account maintained by WMI at WMB, “to a demand deposit

⁶ The attached affidavit and accompanying exhibits, including account statements for all six accounts, confirm that all were maintained at WMI and WMI Investment as deposit accounts. (Logan Aff., A-4 at ¶ 10; A-22—34; A-35—41.) The discussion in text is addressed to the one account as to which JPMC has raised an issue, Account 4234.

account at WMB fsb.” (Logan Aff., A-13 at ¶ 13.) The instruction that the funds should be placed in a demand deposit account was clear and unambiguous. (*Id.*) The paperwork that WMI used to carry out this clear and unambiguous instruction demonstrates unequivocally that Account 4234 is a demand deposit account. The transfer from Account 0667 at WMB to Account 4234 at WMB fsb was effected through the use of New Account Request Forms, which can only be used to open deposit accounts, and cannot effectuate capital contributions. (Logan Aff., A-7 at ¶ 18.) Both the initial New Account Request form that was completed on Friday, September 19, 2008, as well as a subsequent New Account Request form completed three days later to correct an initial processing error, expressly classified the new account as an “On-Us” corporate checking account to be assigned a product code of “B3.”⁷ (A-77—81; A-92—95.) The GL Administration Policy states that “B3’s are non-interest bearing DDA [Demand Deposit Account] accounts,” and further provides that “On-Us” accounts are “Demand Deposit Accounts.” (A-42—45.) Also, the September account statements that JPMC issued shortly after Account 4234 was created attribute that account to WMI and characterize the funds as “customer deposits.” (A-22—35.)

The correspondence between the personnel responsible for opening Account 4234 confirms once again that it is a deposit account. In an email on September 19, 2008, for instance, Rosa Cox, WMB’s Assistant Vice President, wrote to Tawnya Ryason, WMB’s Assistant Vice President, with a “cc” to Ms. Logan, reporting to Ms. Ryason that Ms. Logan needed a “‘Due From FSB’ account to use this month for a new deposit account.” (A-82—84.) After the funds from Account 0667 were initially transferred instead into a new deposit account at WMB as a result of a processing error, WMI personnel addressed the need to complete the transfer into a deposit account at WMB fsb. An

⁷ Although the New Account Request Form properly indicated that the deposit account was to be opened at WMB fsb, a processing error caused a new account ending in number 4218 to be opened not at WMB fsb, but rather at WMB. (Logan Aff., A-8 at ¶ 20; A-77—81.)

email from Ms. Ryason to Ms. Logan on September 22, 2008 states that the “DDA [Demand Deposit Account] was opened on Co 1 [WMB] and not on Co 40 [WMB fsb]. Was this an oversight?” (A-82—84.) Ms. Noblezada responded “Yes, we are fixing this right now. We will be closing the DDA [Demand Deposit Account] on Co 1 and will open one on Co 40” (A-82—84.) On the same day, a revised New Account Request Form and supporting Journal Posting Form were created and the mistake was corrected, retroactively to September 19, 2008, with the creation of a demand deposit account at WMB fsb ending in numbers 4234. (Logan Aff., A-9 at ¶ 22; A-92—95.) Both of those forms classified the new account as “DDA [Demand Deposit Account].”⁸ (*Id.*)

In sum, it is beyond any genuine dispute that the Accounts, including Account 4234, at all times have been demand deposit accounts belonging to WMI and WMI Investment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also In re Tops Appliance City, Inc.*, 372 F.3d 510, 513 (3d Cir. 2004) (summary judgment is appropriate where there is no genuine issue of material fact).

B. There Is No Factual or Legal Basis for JPMC to Claim That the Deposit Into Account 4234 Was Intended as a Capital Contribution

Any suggestion by JPMC that there can be a genuine dispute as to whether Account 4234 is a deposit account is also foreclosed by JPMC’s own post-petition oral and written representations.⁹

⁸ WMI not only created Account 4234 as a deposit account, it used Account 4234 as a deposit account. On September 24 and 25, 2008, WMI paid two invoices, totaling more than \$6 million, that had been billed directly to WMI using a portion of the \$3.674 billion in account 4234. (Logan Aff., A-14 at ¶ 37; A-111—113.)

⁹ JPMC’s suggestion that the monies on deposit in Account 4234 constitute a capital contribution is fundamentally flawed because WMI was not a shareholder of WMB fsb as WMB fsb was an indirect, wholly-owned subsidiary of WMB. Hence, because WMI did not directly own equity in WMB fsb, by definition, it could not have contributed capital to WMB fsb. Black’s Law Dictionary defines “capital contribution” as “[v]arious means by which a shareholder makes (footnote continued)

1. JPMC Itself Continues to Characterize Account 4234 As A Deposit Account

Perhaps most telling is the fact that JPMC itself has represented for months following the P&A Transaction that all of the Accounts, including Account 4234, are deposit accounts. For example, the Account Statements that JPMC has issued to WMI and WMI Investment beginning in September 2008 and continuing to the present, including for Account 4234, have each included the following heading: “Deposit accounts now held by JPMorgan Chase Bank, N.A.” (A-22—34; A-35—41.) These same Account Statements have also reported that the “Deposits are FDIC Insured.” (*Id.*) Thus, despite its position in this litigation, JPMC has issued numerous Account Statements that unequivocally (and correctly) classify the Accounts as deposit accounts belonging to the Debtors.¹⁰

Furthermore, JPMC has repeatedly acknowledged through its own personnel that the Accounts are in fact deposit accounts owed to the Debtors. *See* Fed. R. Evid. 801(d)(2)(D) (providing that statements by party representatives are excluded from the definition of hearsay and therefore admissible as evidence against the party); *see also Zombeck v. Amada America, Inc.*, No. 06-953, 2009 WL 229775, at *3 (W.D. Pa. Jan. 27, 2009) (“Under the Federal Rules of Evidence, a trial court must evaluate evidence for admissibility before considering that evidence in deciding a motion for summary judgment.”) (citing Fed. R. Evid. 104(a)). For example, JPMC personnel familiar with Account 4234 have advised JPMC that the \$3.674 billion transfer between deposit accounts was not a capital contribution. (Logan Aff., A-18 at ¶ 44.) In fact, despite its efforts to

additional funds available to the corporation without the receipt of additional stock.”) Black’s Law Dictionary 201 (7th ed. 1999) (emphasis added).

¹⁰ In a letter dated April 1, 2009, JPMC reported that it would continue to issue account statements while this litigation is pending, “without prejudice and with full reservation of all rights and remedies.” JPMC’s recent effort to reserve rights going forward cannot undo the fact that it has already issued a series of monthly account statements, beginning in September 2008, in which it represented without reservation that the funds are deposits belonging to WMI and WMI Investment. (*e.g.*, A-22—34; A-35—41.)

label those funds as something else for purposes of this litigation, JPMC accounts for the \$3.674 billion as a deposit in its books and records. (Logan Aff., A-19 at ¶ 45.)

JPMC also characterizes Account 4234 as a deposit account in its dealings with federal regulators. JPMC inquired recently whether WMI planned to move the \$3.674 billion out of Account 4234, explaining that, under proposed rules for calculating federal deposit insurance premiums, JPMC's federal deposit insurance premiums would soon increase by about 10 basis points on the \$3.674 billion deposit. (Logan Aff., A-19 at ¶ 46.) The fact that JPMC asked whether WMI intended to remove these funds is a clear acknowledgement by JPMC that Account 4234 is in fact a deposit account belonging to WMI. It is also significant that JPMC has been reporting Account 4234 as a deposit liability to the OCC and paying federal deposit insurance premiums on the deposits in that account. JPMC is taking a dubious and self-serving position in this case that is simply at odds with its treatment of the Accounts for all other purposes.

JPMC has acknowledged even in the pending bankruptcy proceedings that the Accounts are deposit accounts belonging to the Debtors. JPMC filed a proof of claim in the Chapter 11 cases concerning federal tax refunds that the IRS wired to one of the Accounts in which JPMC stated that “[o]n September 30, 2008, the IRS wired the [tax refunds] to *WMI*.” (March 30, 2009, Proof of Claim by JPMC, at 17 (emphasis added).) Furthermore, JPMC entered into an account stipulation with the Debtors, on October 14, 2008, in which JPMC agreed that, upon receipt of this Court's approval, it would transfer the Deposits “as the Debtors, in their sole and absolute discretion, may direct.” (Calamari Decl., A-209 at ¶ 2.) Although the Account Stipulation was ultimately withdrawn, JPMC cannot escape its acknowledgment that the Accounts are deposit accounts available to the Debtors at their discretion. JPMC nevertheless refuses to turn over \$4 billion of the Debtors' money.

2. It Would Have Been Inconsistent with WMI Policy and Forms to Direct the \$3.674 Billion Transfer as a Capital Contribution

Despite its repeated acknowledgements that the Accounts are deposit accounts, JPMC hints in its complaint that the \$3.674 billion transfer into Account 4234 at WMB fsb was a capital contribution, apparently based on a journal entry with a notation referring to a “contribut[ion] to fsb.” This is nothing more than a red herring. The indisputable facts demonstrate that this entry in no way changes the character of the Debtors’ funds or somehow transforms Account 4234 into something other than a deposit account.

First, the stray journal entry was an obvious clerical error, and, in fact, it would have been inconsistent with many of WMI’s internal corporate policies for a capital contribution to have been made in such a manner.¹¹ (Logan Aff., A-16 at ¶ 40.) As set forth on the “WMI and Banking Affiliates General Standards: Authorized Individuals for Intercompany Transactions” and as reflected on the “Washington Mutual REQUEST FOR CONTRIBUTION” form (A-96—101), a capital contribution cannot be made without the approval of the CFO, Treasurer or Corporate Controller. (Logan Aff., A-11 at ¶ 28.) To make a capital contribution, moreover, a “REQUEST FOR CONTRIBUTION” form must be completed, and a reasonably detailed explanation of the nature and purpose of the proposed capital contribution must be included. As reflected in the “Approvals Required” section of the form, the completed form is to be presented via email to representatives of each of the following four departments for approval: Legal, Tax, Controllers, and Treasury. (A-96—101.) Per Washington Mutual policy, all of these steps would have been required before processing a capital contribution, but they were not. (Logan Aff., A-12 at ¶ 31.) This further

¹¹ The “contributes” language was apparently left-over on a computer template that had been used weeks earlier by WMI to make a contribution to WMB. (Logan Aff., A-16 at ¶ 40; A-17 at n.5.)

refutes any possible suggestion that the \$3.674 billion deposit was undertaken as a capital contribution. See Fed. R. Evid. 803(7) (describing hearsay exception permitting evidence of an “absence of entry in records . . . to prove the nonoccurrence or nonexistence of the matter”).

A capital contribution also would have violated the “WMI Liquidity Management Standard,” which requires that cash be maintained at a minimum daily balance of \$150 million, and that net short term position (liquid assets / short term liabilities) be maintained at 100% or greater. (Logan Aff., A-13 at ¶ 34.) Before the \$3.674 billion transfer into Account 4234, WMI’s cash position was \$3.724 billion. The net short term position was 236% in September, 234% in October, 230% in November and 229% in December (as shown in the cash position work sheets). (A-108—110.) Had the \$3.674 billion been a capital contribution and not a transfer into a deposit account, cash would have fallen to about \$50 million – well below the \$250 million early earning and the minimum of \$150 million – and net short term position would have fallen to 17% in September, 15% in October, 12% in November and 10% in December. (Logan Aff., A-14 at ¶ 35.) This would have been well below the minimum of 100%. Thus, it is clear that WMI did not transfer funds into Account 4234 as a capital contribution. WMI did not follow the procedures that would have applied for such a transaction, and such a contribution could not have been made consistent with WMI’s internal policies.¹²

¹² In its adversary complaint, JPMC repeatedly emphasizes that no funds were actually transferred between the Accounts, and that the transaction was “on paper” only. It is not clear whether JPMC means to suggest that this somehow indicates that WMI did not create a bona fide deposit account, but there would be no basis for any such claim. A bank account “consists of nothing more or less than a promise to pay, from the bank to the depositor,” and any suggestion that an account only exists where there are funds physically on hand is simply incorrect. *Citizens Bank of Maryland v. Strumpf*, 516 U.S. at 21. Furthermore, any insinuation that the form of the transfer here was somehow suspect is wrong. In fact, pursuant to a Revolving Master Note (A-122—126), WMB fsb typically lent billions of dollars to WMB each day. Thus, rather than wire the \$3.674 billion from WMB to WMB fsb, WMB increased the receivable from WMB by (footnote continued)

POINT II

THERE IS NO BASIS FOR JPMC TO SETOFF THE AMOUNTS IN THE DEPOSIT ACCOUNTS AGAINST ANY CLAIMS THAT IT SUPPOSEDLY HOLDS AGAINST PLAINTIFFS

In apparent recognition that it has no sound basis to characterize the Accounts as anything other than deposit accounts owing to the Debtors, JPMC has asserted that it is entitled to withhold the funds, even upon a finding that they are owed to the Debtors, on the basis of setoff. Setoff is addressed in section 553 of the Bankruptcy Code. 11 U.S.C. § 553. That provision does not create rights of setoff, but rather preserves such rights as they might otherwise exist at state law, subject to certain bankruptcy-implemented exceptions.¹³ See *Citizens Bank of Maryland*, 516 U.S. at 18. Setoff rights are narrowly construed, however, since it is recognized that “setoff is at odds with a fundamental policy of bankruptcy, equality among creditors, because it permits a creditor to obtain full satisfaction of a claim by extinguishing an equal amount of the creditor’s obligation to the debtor[.]” *In re Bevill, Bresler & Schulman Asset Management Corp.*, 896 F.2d 54, 57 (3d Cir. 1990) (internal quotations omitted); see also *In re Garden Ridge Corp.*, 399 B.R. 135, 139 (D. Del. 2008); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 183-84 (1977), reprinted in 1978 U.S. Code Cong. & Admin. News, p. 6144-45 (“setoff in the reorganization context makes reorganization more

\$3.674 billion. In essence, the funds were transferred and immediately lent back to WMB by WMB fsb. This does not change the fact that WMB fsb was then the obligor for \$3.674 billion on deposit. See *FDIC v. Fedders Air Conditioning*, 35 F.3d 18, 22 (1st Cir. 1994) (“The fact that Fedders paid no money to the bank means nothing; Liberty gave the bank a note, readily described as ‘the equivalent’ of money, to cover a loan by the bank to Liberty, \$250,000 of which the bank promised to retain as an escrow deposit for Fedders. Thus, the equivalent of money was ‘received’ and a deposit account was created.”).

¹³ The Debtors are not arguing that there is no right of setoff generally available to banks under relevant state law, but do not waive this argument. Rather, as set forth in text, summary judgment is now appropriate, among other reasons, because JPMC has no claim against which to assert such a right (even assuming that it would otherwise exist), and because a specific exclusion under Section 553 directly applies.

difficult, because it deprives the debtor of the use of its cash on deposit with banks”). Furthermore, the burden is on the depository institution, JPMC in this case, to establish that it has a basis to assert setoff rights. *In re Garden Ridge Corp.*, 338 B.R. 627, 632 (Bankr. D. Del. 2006).

As set forth below, JPMC cannot assert setoff rights for three separate reasons – i) it has no claim against the Debtors against which to assert such rights (even assuming that it might otherwise possess such rights under state law), ii) any claims that JPMC purports to have against the Debtors were obtained within ninety days prior to the petition date while WMI was insolvent, and setoff is therefore barred under Section 553(a)(2)(B), and iii) there is no mutuality between and among the entities against which, and on behalf of which, JPMC purports to assert claims.

A. JPMC Holds No Claims Against the Debtors’ Estates

Setoff “allows entities that owe each other money to apply their mutual debts against each other . . .” *Citizens Bank of Maryland*, 516 U.S. at 18 (citations omitted). At the most elementary level, then, a party cannot assert a right of setoff against another party without first demonstrating that it possesses a claim against that other party. *Id.*; *see also In re Garden Ridge*, 338 B.R. at 633 (identifying as a condition of set-off that “[t]he creditor hold[] a ‘claim’ against the debtor that arose before commencement of the case”); *In re Passafiume*, 242 B.R. 630, 634 (Bankr. W.D. Ky. 1999) (“to assert set-off in bankruptcy, the claim or debt at issue must have been *absolutely owing* – that is, a definite liability must have already accrued – at the time of the commencement of the bankruptcy proceeding”). JPMC cannot make this threshold showing.

The claims as to which JPMC purports to assert a right of setoff are claims that it supposedly acquired from WMB pursuant to the P&A Transaction.¹⁴ The plain language of the P&A Agreement

¹⁴ JPMC has never purported to have acquired claims from WMB fsb. *Id.* Rather, in its pending adversary proceeding complaint filed in this Court and in its 38 proofs of claim, JPMC has (footnote continued)

makes clear, however, that JPMC did not actually acquire any claims against the Debtors' estate from WMB. Section 3.1 of the P&A Agreement, which concerns the purchase of WMB's assets by JPMC, is expressly made subject to Section 3.5. (P&A Agreement § 3.1.) That provision, in turn, is captioned "Certain Assets Not Purchased" and incorporates Schedule 3.5. (P&A Agreement § 3.5.) Of direct significance here, Schedule 3.5 excludes from any purchased assets, among other things, "any interest, right, action, *claim*, or judgment against . . . *any shareholder or holding company of [WMB]*" (P&A Agreement, Schedule 3.5 (emphasis added).) Thus, according to the plain terms of the P&A Agreement, JPMC did not acquire any claim against WMI, WMB's former sole shareholder and holding company, and JPMC therefore holds no interest against which to apply any right of setoff as against WMI.

B. Any Claims That JPMC Seeks to Assert Were Acquired While Debtors Were Insolvent Within 90 Days of the Petition Date

Under section 553, setoff is not available with respect to any claim transferred to a creditor, "by an entity other than the debtor . . . (B)(i) after 90 days before the date of the filing of the petition; and (ii) while the debtor was insolvent." 11 U.S.C. § 553(a)(2)(B). "Without such a restriction, creditors indebted to a debtor would have an incentive to purchase claims at a discount following the bankruptcy filing, or during the ninety days prior, in order to reduce their indebtedness through the exercise of acquired setoff rights." *In re U.S. Aeroteam, Inc.*, 327 B.R. 852, 866 (Bankr. S.D. Ohio 2005) (citing 5 Collier on Bankruptcy, ¶ 553.03[5][a][i] (15th ed. Rev. 2004)). Furthermore, "[f]or

sought to assert a series of claims that it supposedly acquired from WMB pursuant to the P&A Transaction. Ms. Logan confirms in her affidavit, moreover, that WMB fsb never in fact held any claims against WMI or WMI Investment. (Logan Aff., A-3 at ¶ 7.) Thus, the claims that JPMC purports to have are claims that allegedly originate with WMB, but, as discussed in text, JPMC is barred by the P&A Agreement from asserting such claims. Furthermore, as discussed in Section II.C, *infra*, JPMC would be barred in any event by the "mutuality" requirement from withholding funds in the WMB fsb account to setoff those claims that it supposedly acquired from WMB.

the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.” 11 U.S.C. § 553(c).

Applying section 553(a)(2)(B), JPMC would be ineligible to assert setoff rights even if it had acquired claims against WMI in connection with its P&A Transaction with the FDIC. JPMC entered into the P&A Agreement with the FDIC, “an entity other than the debtor,” one day before the petition was filed in this case (well within the 90-day window under statute). 11 U.S.C. § 553(a)(2)(B)(i). Also, with one of its primary banking assets, WMB, having already been placed in receivership as of that time, WMI was plainly insolvent. 11 U.S.C. § 553(a)(2)(B)(ii). On WMI’s schedule of assets and liabilities filed with this Court, in fact, WMI listed assets of \$4.48 billion and liabilities of \$7.83 billion. The Debtors are also protected by a statutory presumption of insolvency under Section 553(c), which further supports the Debtors’ application for summary judgment. *Cf. In re USN Communications, Inc.*, 280 B.R. 573, 583 (Bankr. D. Del. 2002) (applying Section 547: “Plaintiff is afforded the benefit of the presumption contained in § 547(f) which provides that ‘[f]or the purposes of [§ 547], the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.’ . . . Therefore, unless Defendant introduces some evidence showing that Debtor was solvent at the time the Alleged Transfers took place, Plaintiff’s burden has been met and the Alleged Transfers will be avoidable under § 547(b).”).

In sum, the requirements of section 553(a)(2)(B) are plainly satisfied – it is beyond dispute that JPMC acquired its supposed claims from a third party within ninety days of the bankruptcy filing while the Debtors were insolvent. JPMC is therefore barred from retaining the Debtors’ funds. *See In re Lang Machinery Corp.*, Nos. 86-415, 87-347, 87-346, 1988 WL 110429, at *4 (Bankr. W.D. Pa. Oct. 19, 1988) (“Because the judgment was confessed and assigned within 90 days before the filing of the bankruptcy petition and the presumption of insolvency of the Debtor was not

rebutted, 11 U.S.C. § 553(c), LMCI is prohibited from making a setoff under § 553(a)(2)”; *In re Wood*, 87 B.R. 170, 172 (Bankr. D. Kan. 1988) (“this Court is cognizant of the fact that a bankruptcy court’s broad equitable powers do not allow it to override explicit mandates of other sections of the Code. In this case, section 553(a)(2)(B) of the Code explicitly mandates that the Court disallow the claim for setoff. The section, therefore, leaves no room for equitable consideration.”).

C. Setoff Is Unavailable Because There Is a Lack of Mutuality

It is well settled that rights of setoff are available only where debts are “mutual,” *i.e.*, when “they are due to and from the same persons in the same capacity.” *See, e.g., Westinghouse*, 278 F.3d 138, 149 (2d Cir. 2002); *Garden Ridge*, 338 B.R. at 633 (“To establish its right to setoff under Section 553 of the Bankruptcy Code, the creditor must show mutuality of obligation”). “It is also widely accepted that ‘mutuality is strictly construed against the party seeking setoff.’” *In re SemCrude, L.P.*, 399 B.R. 388, 393 (Bankr. D. Del. 2009); *see also Garden Ridge*, 338 B.R. at 634 (“For setoff purposes, the mutuality requirement is strictly construed”). This Court recently explained the mutuality requirements in the context of related corporate entities,

Because of the mutuality requirement in section 553(a), courts have routinely held that triangular setoffs are impermissible in bankruptcy. Moreover, because each corporation is a separate entity from its sister corporations absent a piercing of the corporate veil, ‘a subsidiary’s debt may not be set off against the credit of a parent or other subsidiary, or vice versa, because no mutuality exists under the circumstances.’ *Sentinel Products Corp.*, 192 B.R. at 46 (citing *MNC Commercial Corp. v. Joseph T. Ryerson & Son, Inc.*, 882 F.2d 615, 618 n. 2 (2d Cir.1989)). Allowing a creditor to offset a debt it owes to one corporation against funds owed to it by another corporation-*even a wholly-owned subsidiary*- would thus constitute an improper triangular setoff under the Code.

In re SemCrude, L.P., 399 B.R. at 393 (emphasis added) (citations omitted); *see also In re Garden Ridge*, 338 B.R. at 635.

Any effort by JPMC to assert setoff would amount to an improper “triangular setoff” in at least two respects. First, JPMC is withholding approximately \$53 million of deposits in Account 4704, to offset its supposed claims against WMI. As set forth on the face of its March 2009 statement, however, Account 4704 is maintained by WMI Investment, an entity separate and distinct from WMI. (A-34—41.) Thus, JPMC is seeking to use deposits belonging to one entity as a setoff for claims supposedly held against a different entity. This is plainly not permitted, and, as JPMC has asserted no claims against WMI Investment, JPMC has no legitimate basis to withhold the \$53 million in a WMI Investment Account. *See In re SemCrude, L.P.*, 399 B.R. at 393; *see also In re Garden Ridge*, 338 B.R. at 635 (“It is settled law that a triangular setoff exists even where the parties are related subsidiaries.”) (citing authority).

Second, JPMC purports to hold claims against WMI in JPMC’s capacity as successor to WMB by operation of the P&A Agreement. Of the \$4.3 billion that JPMC proposes to retain as a setoff, however, the lion’s share, \$3.674 billion, is held in an account that it maintains as successor to WMB fsb, a distinct corporate entity from WMB. As discussed, mutuality requirements are strictly construed, and JPMC therefore cannot offset funds that it holds as successor to one corporate entity in satisfaction of claims that it possesses as successor to another distinct entity. *In re Garden Ridge*, 338 B.R. at 635. It does not affect this analysis, moreover, that JPMC has now apparently absorbed both WMB and WMB fsb within one larger entity. Mutuality must exist at the time the competing debts and claims are incurred, and any subsequent restructuring cannot be employed as a device for avoiding or circumventing the bar against triangular setoff. *See Wade Cook Financial Corp. v. Carey*, 375 B.R. 580, 598 (9th Cir. 2007) (holding that the consolidation of debtors’ chapter 11 cases did not mean that a tax debt owed by one debtor could be offset against a tax refund due another); *see also Depositors Trust Co. of Augusta v. Frati Enterprises, Inc.*, 590 F.2d 377, 379 (1st

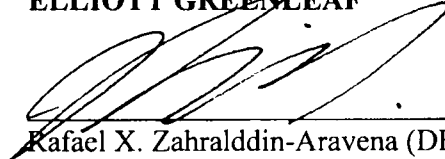
Cir. 1979) (“It is well established that one subsidiary may not set off a debt owed to a bankrupt against a debt owing from the bankrupt to another subsidiary. Thus, although Bangor and Augusta are basically the same bank, we cannot treat them as such, in the absence of an agreement by the bankrupt to treat the two banks as one.”). As the Court recently observed in *Semcrude*, “[b]y allowing parties to contract around the mutuality requirement of section 553, one creditor or a handful of creditors could unfairly obtain payment from a debtor at the expense of the debtor’s other creditors, thereby upsetting the priority scheme of the Code and reducing the amount available for distribution to all creditors.” *Semcrude*, 399 B.R. at 399.

CONCLUSION

For the reasons discussed, Plaintiffs respectfully request that the Court grant their Motion for Summary Judgment and direct that JPMC turnover approximately \$4 billion in deposits belonging to the Estate, along with appropriate interest.

Dated: May 19, 2009
Wilmington, Delaware

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*Proposed Special Litigation and Conflicts Co-Counsel to
Washington Mutual, Inc. and WMI Investment Corp*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----	X	
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	Adversary Proceeding No. 09-50934(MFW)
	:	
Plaintiffs and Counterclaim Defendants,	:	
	:	
v.	:	
	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Defendant and Counterclaimant.	:	
-----	X	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Cross-Claimant,	:	
	:	
v.	:	
	:	
FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of Washington Mutual Bank, Henderson, Nevada,	:	
	:	
Cross-Claim Defendant.	:	
-----	X	

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share the principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

**ANSWER AND COUNTERCLAIMS / CROSS-CLAIM
OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

Defendant JPMorgan Chase Bank, National Association (“JPMC”), by and through its undersigned counsel, for its Answer to the Complaint For Turnover of Estate Property of Washington Mutual, Inc. and WMI Investment Corp. (collectively, “WMI” or “Debtors”) dated April 27, 2009 (the “Complaint”), hereby responds as follows:

NATURE OF ACTION

1. To the extent any response is required, denies the allegations of paragraph 1, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Debtors’ statement of their own intentions.

2. Denies the allegations of paragraph 2, except admits that JPMC entered into a Purchase and Assumption Agreement (Whole Bank) Among Federal Deposit Insurance Corporation, Receiver of Washington Mutual Bank, Henderson, Nevada, Federal Deposit Insurance Corporation and JPMorgan Chase Bank, National Association dated as of September 25, 2008 (the “P&A Agreement”) pursuant to which JPMC acquired certain assets and liabilities of Washington Mutual Bank, Henderson Nevada (“WMB”), and respectfully refers the Court to the P&A Agreement for a complete and accurate statement of its terms.

3. Denies the allegations of paragraph 3, except admits that Debtors have quoted a portion of the second recital contained in the P&A Agreement, and refers the Court to the P&A Agreement for a complete and accurate statement of its terms.

4. Denies the allegations of paragraph 4, except denies knowledge or information sufficient to form a belief as to the truth of Debtors’ allegations concerning what Debtors contemplated.

5. Denies the allegations of paragraph 5.

6. Denies the allegations of paragraph 6.

7. Denies the allegations of paragraph 7, except admits that JPMC has asserted that it has valid rights of setoff and a valid security interest against funds claimed by Debtors to be deposit liabilities owed by JPMC.

8. Paragraph 8 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 8, except (i) admits that JPMC has asserted that it has valid rights of setoff and a valid security interest against funds claimed by Debtors to be deposit liabilities owed by JPMC and (ii) denies knowledge or information sufficient to form a belief as to the truth of debtors' allegations concerning their solvency.

9. Denies the allegations of paragraph 9, except admits that the Complaint purports to seek turnover and restitution.

JURISDICTION AND VENUE

10. Paragraph 10 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 10, except admits that Debtors purport to bring this action under Federal Rule of Bankruptcy Procedure 7001 and II U.S.C. §§ 541 and 542.

11. Paragraph 11 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 11, except admits that Debtors purport to allege that this Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b).

12. Paragraph 12 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 12, except admits that Debtors purport to allege that venue is proper under 28 U.S.C. § 1409(b).

13. Paragraph 13 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 13, except admits that Debtors purport to allege that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E).

THE PARTIES

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 and respectfully refers the Court to Debtors' filings in this action for a complete and accurate statement of their content.

17. Admits the allegations of paragraph 17.

FACTUAL BACKGROUND

18. Denies the allegations of paragraph 18.

19. Denies the allegations of paragraph 19 and respectfully refers the Court to the referenced Exhibit for a complete and accurate statement of its content.

20. Denies the allegations of paragraph 20.

21. Denies the allegations of paragraph 21, except admits that Debtors purported to list certain accounts on their Schedules of Assets and Liabilities filed with the Bankruptcy Court.

22. Denies the allegations of paragraph 22, and respectfully refers the Court to the GL Administration Policy for a complete and accurate statement of the terms of that policy.

23. Denies the allegations of paragraph 23, except admits that the documents attached as Exhibit C are copies of documents sent by JPMC but avers that such documents were sent (i) subject to a full reservation of rights, (ii) pending judicial resolution, without prejudice to JPMC's position that the accounts referenced did not reflect deposit accounts and/or did not contain, in whole or in part, funds belonging to Debtors, and (iii) subject to Debtors' acknowledgment of JPMC's rights of setoff, recoupment and offset.

24. Denies the allegations of the first sentence of paragraph 24. The second sentence of paragraph 24 contains legal assertions as to which no response is required. To the extent a response is required, denies the allegations of the second sentence of paragraph 24 to the extent applicable to the accounts that form the basis of Debtors' Complaint.

25. Denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.

26. Denies the allegations of paragraph 26, except denies knowledge or information sufficient to form a belief as to the truth of Debtors' allegations concerning what WMI "determined."

27. Denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, except admits that WMI engaged in improper conduct and did not properly create a deposit account at Washington Mutual Bank fsb ("WMB fsb").

28. Denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, except admits that WMI improperly directed backdated entries on the books and records of WMB and avers that the misconduct of WMI caused the system to generate account statements that did not accurately reflect either the

character of the accounts at issue, the existence of valid and collectible account balances, or the proper ownership as between WMI, WMB and WMB fsb of any actual funds.

29. Denies the allegations of paragraph 29, except denies knowledge or information sufficient to form a belief as to what was intended by Debtors.

30. Denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30, except (i) respectfully refers the Court to the GL Administration Policy for a complete and accurate statement of its contents, (ii) respectfully refers the Court to Exhibit D for a complete and accurate statement of its contents, and (iii) avers that the efforts of WMI to create a deposit account liability at WMB fsb in the days prior to WMB's seizure by the regulators did not comply with internal policies or applicable law.

31. Denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32. Denies the allegations of the third sentence of paragraph 32 and denies knowledge or information sufficient to form a belief as to the truth of the first and second sentences of paragraph 32.

33. Denies the allegations of paragraph 33, except (i) admits that JPMC acquired certain assets and assumed certain liabilities of WMB pursuant to the P&A Agreement and respectfully refers the Court to that Agreement for a complete and accurate statement of its terms, (ii) admits that the assets acquired by JPMC pursuant to the P&A Agreement included all of the stock of WMB fsb, and (iii) admits that Debtors purport to reference a press release issued by the FDIC and respectfully refer the Court to that release for a complete and accurate statement of its contents.

34. Denies the allegations of paragraph 34, except admits that Debtors purport to quote from the P&A Agreement and respectfully refers the Court to the P&A Agreement for a complete and accurate statement of its terms.

35. Denies the allegations of paragraph 35, except admits that Debtors purport to quote from the P&A Agreement and respectfully refers the Court to the P&A Agreement for a complete and accurate statement of its terms.

36. Paragraph 36 contains legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 36 and respectfully refers the Court to the P&A Agreement for a complete and accurate statement of its terms.

37. Denies the allegations of paragraph 37, except admits that WMB fsb became a wholly-owned subsidiary of JPMC and was subsequently merged into JPMC.

38. Denies the allegations of paragraph 38, except respectfully refers the Court to the referenced public statements for a complete and accurate statement of their contents.

39. Denies the allegations of paragraph 39, except denies knowledge or information sufficient to form a belief as to Debtors' contemplation and respectfully refers the Court to the Account Stipulation for a complete and accurate statement of its terms.

40. Denies the allegations of paragraph 40, except respectfully refers the Court to the Account Stipulation for a complete and accurate statement of its terms.

41. Denies the allegations of paragraph 41, except respectfully refers the Court to the referenced public statement for a complete and accurate statement of its contents.

42. Denies the allegations of paragraph 42.

43. Denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43, except admits that JPMC has declined to confirm

that some or all of the accounts that Debtors claim to be demand deposit accounts are demand deposit accounts or the property of Debtors.

44. Denies the allegations of paragraph 44, except admits that JPMC has refused to turn over certain accounts which Debtors claim belong to it and which claim JPMC disputes, in whole or in part, and avers that JPMC has commenced an interpleader to determine the character of such accounts and to resolve disputed claims with respect to ownership of any funds actually in such accounts.

45. Denies the allegations of paragraph 45, except admits that JPMC reached an agreement with Debtors to accrue interest to the extent the accounts are determined to be deposit accounts and contain funds that belong to Debtors.

46. Denies the allegations of paragraph 46, except admits that JPMC issues Account Statements to Debtors but only (i) subject to a full reservation of rights, (ii) pending judicial resolution of disputes relating to Debtors' claims of ownership and without prejudice to JPMC's position that the accounts referenced are not deposit accounts and/or do not contain, in whole or in part, funds belonging to Debtors, and (iii) subject to JPMC's rights of setoff, recoupment and offset.

47. Denies the allegations of paragraph 47, except admits that Debtors purport to quote from a proof of claim filed by JPMC and respectfully refers the Court to the proof of claim identified in the paragraph for a complete and accurate statement of the terms of its contents.

48. Paragraph 48 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 48.

49. Paragraph 49 contains legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 49 and respectfully refers the Court to the P&A Agreement for a complete and accurate statement of its terms.

50. Paragraph 50 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 50.

51. Paragraph 51 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 51.

52. Paragraph 52 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 52, except denies knowledge or information sufficient to form a belief as to the truth of Debtors' allegations concerning their solvency.

53. Paragraph 53 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 53.

54. Paragraph 54 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 54.

55. Paragraph 55 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 55.

FIRST CLAIM FOR RELIEF
Turnover Pursuant to 11 U.S.C. § 542

56. JPMC incorporates its responses to paragraphs 1 through 55 as if fully set forth herein.

57. Paragraph 57 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 57.

58. Denies the allegations of paragraph 58, but admits that Debtors do not presently have use of what they claim to be “the Deposits.”

59. Paragraph 59 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 59.

60. Paragraph 60 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 60.

61. Paragraph 61 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 61 except or denies knowledge sufficient to form a belief as to the truth of Debtors’ allegations concerning their solvency.

62. Paragraph 62 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 62.

63. Paragraph 63 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 63.

64. Paragraph 64 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 64.

65. Denies the allegations of paragraph 65, except admits that to the extent the accounts referenced in Debtors’ complaint are in fact deposit accounts and in fact contain actual funds, JPMC has possession and custody of them.

66. Denies or denies knowledge sufficient to form a belief as to the allegations of paragraph 66.

67. Paragraph 67 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 67.

SECOND CLAIM FOR RELIEF
Unjust Enrichment

68. JPMC incorporates its responses to paragraphs 1 through 67 as if fully set forth herein.

69. Paragraph 69 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 69.

70. Paragraph 70 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 70.

71. Paragraph 71 consists of legal assertions as to which no response is required. To the extent a response is required, denies the allegations of paragraph 71.

72. Denies the allegations of paragraph 72 except admits that Debtors purport to seek an order as alleged in the paragraph.

73. Denies all of the allegations of the Complaint not specifically admitted above, including those set forth in the Reservation of Rights and Prayer for Relief.

AFFIRMATIVE DEFENSES

In further response to the Complaint, upon information and belief and subject to further investigation and discovery, JPMC alleges the following affirmative defenses without assuming any burden of proof that JPMC does not otherwise bear:

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

The Court lacks subject matter jurisdiction over Debtors' claims in this action.

Third Affirmative Defense

Debtors lack standing to maintain some or all of the claims alleged in the Complaint.

Fourth Affirmative Defense

Debtors' claims are barred, in whole or in part, by principles of *res judicata* and/or collateral estoppel.

Fifth Affirmative Defense

To the extent subject matter jurisdiction over Debtors' claims in this action is not limited to the United States District Court for the District of Columbia, Debtors' claims are compulsory counterclaims that they were required to bring in the Adversary Proceeding entitled *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*

Sixth Affirmative Defense

Debtors are barred from seeking or obtaining some or all of the relief sought in the Complaint by the doctrines of waiver and/or estoppel.

Seventh Affirmative Defense

Debtors are barred from seeking or obtaining some or all of the relief sought in the Complaint as a result of their unclean hands.

Eighth Affirmative Defense

Debtors are barred from seeking or obtaining some or all of the relief sought in the Complaint by the doctrine of *in pari delicto*.

Ninth Affirmative Defense

Debtors' claims are barred, in whole or in part, for failure to join one or more indispensable parties.

Tenth Affirmative Defense

Debtors' claims are barred, in whole or in part, by applicable banking rules, regulations and statutes.

Eleventh Affirmative Defense

JPMC is entitled to a setoff, recoupment and/or offset from any recovery to which Debtors may be found to be entitled.

Twelfth Affirmative Defense

Debtors are barred from some or all of the recovery they seek due to a failure of consideration.

Thirteenth Affirmative Defense

Debtors' claims are barred, in whole or in part, due to their fraud.

Fourteenth Affirmative Defense

Debtors' claims are barred, in whole or in part, because their conduct and/or the matters upon which their claims are based was or are illegal.

Fifteenth Affirmative Defense

Debtors' claims are barred, in whole or in part, because the transactions on which their claims are based were the product of duress.

Sixteenth Affirmative Defense

Debtors failed to exhaust their administrative remedies.

Seventeenth Affirmative Defense

Debtors' claims are barred, in whole or in part, by the statute of frauds.

JPMORGAN CHASE'S COUNTERCLAIMS / CROSS-CLAIM

JPMC, for its counterclaims against Debtors, and its cross-claim against the FDIC, alleges upon knowledge as to itself and upon information and belief as to all other matters as follows:

NATURE OF ACTION

1. JPMC brings these counterclaims and cross-claims to protect itself from the ongoing efforts of WMI to claim as its own assets that do not belong to WMI and from WMI's transparent attempt to profit from its own misconduct in causing WMB's failure by trying to shift the cost of that failure to the federal government and JPMC as the purchaser of assets in good faith from the FDIC as Receiver for WMB under Title 12 of the United States Code. Certain of these counterclaims and cross-claims are among the claims that have already been asserted in an adversary proceeding entitled *JPMorgan Chase National Association v. Washington Mutual, Inc., et al.* (the "JPMC Adversary Proceeding").

2. JPMC is also asserting a claim for fraud relating to WMI's purported transfer of \$3.67 billion from WMB to WMB fsb in the days leading up to WMB's seizure by government regulators. This most extraordinary purported transfer was attempted by WMI with full knowledge that WMB was about to fail and would shortly be seized by regulators, and while WMB was experiencing massive outflows of deposits from unaffiliated depositors. The purported transaction was engineered by WMI without disclosure of relevant facts, without the informed and voluntary participation of WMB fsb, without the actual movement of any funds from WMB to WMB fsb, and for the purpose of putting WMI in a position to try to lay claim to

\$3.67 billion that it would not otherwise have had a clear right to upon WMB's failure. Indeed, the purported transfer of \$3.67 billion by WMI from WMB to WMB fsb was supposedly accompanied by the simultaneous, round trip, loan back from WMB fsb to WMB of precisely the same \$3.67 billion WMI purportedly transferred in the other direction. In other words, without disclosure of material facts to WMB fsb, and without any movement of funds to WMB fsb, WMI purported to (i) impose upon WMB fsb an unconditional \$3.67 billion obligation to WMI, (ii) require WMB fsb to loan \$3.67 billion to WMB when WMI knew WMB was not safe and sound and that no rational bank would ever make such an unsecured loan and that WMB was about to be placed in a receivership and would therefore unlikely ever pay the loan back, and (iii) thereby effectively steal \$3.67 billion from WMB fsb. JPMC, as the successor to WMB fsb, is entitled to recover from WMI for this blatant fraud.

3. JPMC believes that disputes involving the matters that are the subject of Debtors' claims and these counterclaims and cross-claims must be resolved in the action commenced by Debtors in the United States District Court for the District of Columbia entitled *Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation*, Case No.1:09-cv-00533 (the "D.C. Action"). In addition, JPMC has requested withdrawal of the reference to the bankruptcy court for this action. And JPMC believes that this turnover proceeding must be dismissed because, among other things, there is a dispute about the alleged assets that are the subject of Debtors' complaint, which makes turnover improper. However, without prejudice to those positions, JPMC seeks a resolution through these counterclaims and cross-claims to the extent the disputes that are the subject of this action are not resolved in the D.C. Action, as JPMC believes they should be, and to the extent this action is not dismissed, as JPMC also believes it should be.

4. Under the P&A Agreement, JPMC acquired the business and related assets of WMB, including ownership of all of WMB's direct and indirect subsidiaries, and all right, title and interest of the Receiver in those assets. As provided for in the P&A Agreement, JPMC purchased "all of the Receiver's right, title and interest" to these assets, pursuant to and in accordance with the Federal Deposit Insurance Act, as amended (the "FDI Act"). Among the assets acquired by JPMC under the P&A Agreement were certain assets that have been claimed by Debtors in this action and elsewhere. JPMC's right in the assets that the Debtors seek to recover from JPMC in this action were transferred to JPMC by the FDIC pursuant to the P&A Agreement.

5. On December 30, 2008, the Debtors submitted claims in the Receivership for, among other things, ownership of the assets that they seek to require JPMC to turn over to them in this action. On January 23, 2009, the FDIC, as Receiver, disallowed the Debtors' claims to those assets. The Debtors elected not to appeal the disallowance of their claims to ownership of these assets. Rather, on March 20, 2009, the Debtors filed the D.C. Action against the FDIC in the United States District Court for the District of Columbia, challenging the disallowance of their claims and also claiming ownership of, among other things, those assets. The Debtors have exercised their purported right to demand a trial by jury in the District Court Action.

6. The Court in the D.C. Action has not overturned the FDIC's disallowance of the Debtors' claims to the assets that the Debtors seek to recover from JPMC in this action. Debtors' claims to the assets have already been disallowed pursuant to the resolution procedures under Title 12. Consequently, unless and until the D.C. Court overturns that disallowance, the Debtors have no rights in the assets they seek to recover from JPMC in this action, and both the Debtors and this Court are bound to honor and respect the determination under Title 12.

7. The assets that are the subject of the Debtors' disallowed claims are also among the assets set forth in the Debtors' Schedules and Statements of Financial Affairs filed with this Court on December 19, 2008, January 27, 2009 and February 24, 2009 (collectively, the "Schedules"). Notwithstanding the assertions in the Schedules and the D.C. Action, there are substantial questions as to ownership of the assets that are the subject of the Debtors' claims in this action. They are, in whole or in part, not property of the Debtors' estates under 11 U.S.C. §541, and they are, in whole or in part, property of JPMC, which acquired them in good faith and for value from the FDIC pursuant to the FDI Act.

8. In response to the Debtors' actions and in order to protect its economic interests in the assets the Debtors chose to put at issue in the District Court Action, on March 24, 2009, JPMC filed the JPMC Adversary Proceeding. In that action, JPMC seeks declaratory relief requesting adjudication in the D.C. Action of the ownership of assets put at issue by Debtors in that action or, in the alternative, requesting that the Bankruptcy Court grant relief as to JPMC's interests therein. On May 29, 2009, Debtors answered JPMC's Complaint in the JPMC Adversary Proceeding and asserted eighteen counterclaims, none of which included the claims Debtors assert in this Complaint even though these omitted claims are compulsory counterclaims.

9. In this action, JPMC seeks (a) a determination that title to the disputed accounts and any funds in those accounts be determined in the D.C. Action, and (b) to the extent that does not happen, pursuant to Title 12 and the P&A Agreement, (i) a declaration that, as the successor of the Receiver, it has or is entitled to full legal title to and the beneficial interest in some or all of the "disputed accounts" and any funds in them, (ii) adjudication of any and all conflicting claims to the so-called "disputed accounts" and any funds in them, and (iii)

adjudication of claims relating to other assets sold to JPMC pursuant to the P&A Agreement, resolution of which are necessary to determine, among other things, the extent of interrelated setoff claims.

PARTIES

10. Counterclaimant JPMC is a national banking association organized under the laws of the United States of America with its principal place of business in Columbus, Ohio. JPMC is a wholly-owned subsidiary of JPMorgan Chase & Co., a corporation organized under the laws of the State of Delaware. JPMC is the “Assuming Bank” as that term is defined in the P&A Agreement and is the successor to and good faith purchaser for value from the Receiver under the P&A Agreement and under Title 12 of the United States Code.

11. Counterclaim Defendant WMI is a holding company incorporated in Washington with its principal place of business in Seattle, Washington and is one of the debtors and debtors-in-possession in these cases, having filed its voluntary petition for reorganization under chapter 11 of Title 11 of the United States Code on September 26, 2008 (the “Petition Date”) before the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

12. Counterclaim Defendant WMI Investment Corp. is a Delaware corporation with its principal place of business in Seattle, Washington and is the other debtor and debtor-in-possession in these cases. WMI and WMI Investment Corp. are referred to collectively as “WMI” or “Debtors”.

13. Cross-Claim Defendant FDIC is a federal corporation with its principal place of business in the District of Columbia. The FDIC is named as a defendant solely in connection with the interpleader claim and the claim for assets sold pursuant to the P&A Agreement in its capacity as Receiver of WMB.

JURISDICTION

14. This Court has jurisdiction over these counterclaims and cross-claims pursuant to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. §§ 1334 and 1335, 28 U.S.C. § 157, and Bankruptcy Rules 7013, 7019 and 7020.

STATEMENT OF FACTS

A. The Bank Failure and Acquisition.

15. On September 18, 2008, the Office of Thrift Supervision (“OTS”) designated WMB as a “problem institution,” thus subjecting it to closer control and scrutiny by the federal regulatory authorities and on September 25, 2008, the OTS placed WMB in receivership because of significant concerns over the safety and soundness of the institution. To ensure continuity of operations, maximize public confidence and minimize cost to the public treasury, the FDIC ran an accelerated bidding process in accordance with statutorily mandated procedures under Title 12 that, subject to certain limited exceptions, resulted in the sale of all of the Receiver’s right, title and interest to or in WMB’s assets whether or not reflected on the books and records of WMB, to JPMC pursuant to the terms of the P&A Agreement.

16. At the time of the Receivership, WMB was the sixth-largest bank in the United States, with 2207 branches, more than 43,000 employees, and more than 13 million depositors with more than \$140 billion of deposit liabilities insured by the FDIC.

17. WMB also owned 100% of WMB fsb. WMB fsb or “the little bank” (as it has sometimes been called) had 26 offices to WMB’s 2,207 and less than \$5 billion in customer deposits insured by the FDIC to WMB’s more than \$140 billion.

18. The FDIC’s ability to promptly find a suitable acquirer of WMB’s banking operations had significant economic and policy ramifications. This was a bank failure of unprecedented magnitude that occurred in the midst of the most severe financial crisis in

decades. Had the FDIC been unable to sell the assets of WMB, 13 million depositors would have lost their bank and the confidence of consumers in the banking system generally would likely have been further undermined. The protection of the title conveyed by the FDIC to institutions like JPMC, who are encouraged to step into the breach and provide the stability and continuity necessary to avert a run on a failing bank and disruption of its services to the public, is critical to the ability of the regulators to manage bank failures under Title 12 and the government to administer an insurance fund that can maintain public confidence in the banking system.

19. That WMB stands as the largest bank failure in United States history stems in large part from the financial crisis and crisis of confidence that still grips the nation. In the ten days immediately prior to the Receivership, WMB experienced deposit outflows of more than \$16.7 billion, amounting to more than \$2 billion per banking business day, as its customers were apparently moving their assets so as to avoid the effects of what was increasingly perceived to be an inevitable bank failure. Incredibly, while that was occurring, WMI engaged in a series of inappropriate and ineffective book entries described below, in order to try to seize for itself assets that belonged to WMB.

20. JPMC had only two days after being briefed by the FDIC to submit a bid and then only twenty-four hours from the time that its bid was accepted by the FDIC until the time the acquisition closed to complete the single-largest acquisition of a failed institution in United States history. The circumstances which led to execution of the P&A Agreement meant that JPMC had limited opportunity to prepare for this unprecedented transaction.

21. The acquisition included, among other things, a nationwide credit card lending business, a multi-family and commercial real estate lending business, and nationwide mortgage banking activities. JPMC's acquisition avoided an interruption in WMB's banking

services. It assured that the 2,207 branches operated by WMB, as well as the 26 additional branches operated by WMB fsb, opened for business on September 26, 2008, protecting the interests of employees, customers, vendors, and communities who were dependent on WMB's banking operations. JPMC paid \$1.88 billion dollars to the FDIC for these and other assets, and assumed all deposits. This transaction involved no financial assistance from, or cost to, the FDIC's Deposit Insurance Fund. This stands in contrast to other recent bank failures such as the FDIC's sale of IndyMac Federal Bank FSB, which cost the FDIC approximately \$10.7 billion, despite IndyMac being a much smaller bank than WMB.

22. There is substantial evidence that, contrary to Debtors' unsupported assertions, at the time of the receivership and at all relevant times before the receivership, WMI, WMB, and WMBfsb were solvent. Indeed, the OTS found that "WMB met the well-capitalized standards *through the receivership date.*" (OTS Fact Sheet 9/25/2008 (emphasis added).)

23. The task of stabilizing, integrating and creating as smooth a transition as possible has been time-consuming and arduous. But its success has been vital to the banking system, the communities served by WMB and the general public interest.

B. Combined Operations of Washington Mutual

24. As a federal savings association committed to serving consumers and small businesses, WMB accepted deposits from the general public, originated, purchased, serviced and sold home loans, made credit card, home equity, multi-family and other commercial real estate loans, and to a lesser degree, engaged in certain commercial banking activities. WMB's substantial mortgage business was hit especially hard by increasing home and commercial mortgage delinquencies in late 2007 and 2008.

25. As the financial crisis took root toward the end of 2007, WMI focused its efforts on raising capital for WMB. In late 2007, WMI raised approximately \$3 billion in new capital through the issuance of a series of debt securities. In early 2008, WMI sought out merger partners and equity investors. A number of companies participated in the process (including JPMC, which submitted a bid to acquire WMI, but whose bid was rejected by WMI). In April 2008, in lieu of an acquisition or a merger, WMI negotiated a capital infusion of approximately \$7.2 billion from a group of investment funds led by Texas Pacific Group, a private equity firm, through an issuance of preferred stock, which included anti-dilution provisions that severely constricted the ability of WMI to raise additional capital.

26. All of the money raised by WMI provided additional capital to WMB. WMI formally contributed to WMB at least \$6.5 billion of the approximately \$10.2 billion in capital it had raised. As discussed below, certain book entries made between September 19 and September 24, 2008 reflect that an additional \$3.7 billion was apparently contributed as capital to WMB fsb, accounting for much of the remaining debt and equity capital raised by WMI during 2007 and 2008. While book entries were made, neither WMI nor WMB transferred cash or other good funds to WMB fsb corresponding to the book entries, whether as a contribution or otherwise.

27. Prior to the Receivership, WMI and WMB had identical and overlapping directors and held joint meetings of the Boards of Directors of both entities on a combined basis, resulting, in effect, in a single Board of Directors with identical directors that met on the same topics at the same time and collectively made decisions for both entities. WMI's officers and employees were also officers and directors of WMB and WMI and WMB shared a joint general ledger and other books and records, and centralized their decision making, treasury, cash

management, finance, governance, regulatory and executive functions in the same individuals. The overlap was so extensive that, as of the time of the Receivership and subsequent Petition Date, WMI claimed it had only a handful of employees remaining as the result of the Receivership.

28. Likewise, the assets and liabilities of the Debtors and their direct and indirect subsidiaries, including the Affiliated Banks, were connected and in many cases, commingled and intertwined. Prior to the Receivership, the Debtors and their direct and indirect subsidiaries operated a centralized and consolidated cash management system pursuant to which external receipts and payments were accounted for on a consolidated basis and internal receipts or payments were done in whole or in part by book or journal entry as “due to/from” accounts on the general ledger or other books of account.

29. At various times prior to the Receivership, WMI entered into agreements with third parties that titled assets or contractual rights in WMI’s name although WMB or a subsidiary of WMB paid for the asset or contractual right or was the entity liable on the payment or liability therefore. At various times prior to the Receivership, WMI also entered into intercompany arrangements with the Affiliated Banks with documentation different than the documentation that the Affiliated Banks would have obtained in an arm’s-length transaction with an unaffiliated party.

30. In 2007 and 2008, WMI undertook a series of projects and other acts, at least some of which appear to have moved assets away from WMB or its subsidiaries to WMI or another of WMI’s subsidiaries. This included transfers undertaken during August and September 2008 as part of WMI’s self-titled “WMI Cash Optimization Program”, for the apparent benefit of WMI.

31. To the extent that that any person has or may assert claims against JPMC that resulted from these transactions, JPMC is entitled to be indemnified and held harmless by WMI since all pre-petition transactions were consummated at the behest and direction of WMI and for its benefit.

C. The Intercompany Amounts and Accounts

(i) The “On-Us” Accounting Entries

32. On the Petition Date, WMI claimed that JPMC was liable to pay a total purported deposit liability to WMI and its non-WMB subsidiaries, originally claimed in the amount of \$5 billion. In their complaint in this action, Debtors assert claims in six accounts (the “Disputed Accounts”) in the total amount of \$4,038,509,283 (the “Intercompany Amounts”). According to WMI, the Intercompany Amounts represent deposits maintained by WMI at the Affiliated Banks.

33. JPMC disputes Debtors’ characterization of the Disputed Accounts and its claimed entitlement to the Intercompany Amounts. With respect to the Disputed Account alleged to have been created by WMI at WMB fsb on the eve of WMB’s receivership, JPMC further specifically disputes that such an account was properly created or that good funds – alleged by Debtors to be approximately \$3.67 billion – were ever delivered to WMB fsb.

34. As set forth in the P&A Agreement, JPMC purchased “all of the Receiver’s right, title and interest,” in the Intercompany Amounts, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the Intercompany Amounts. On January 23, 2009, the Debtors’ claims were disallowed by the Receiver. On March 20, 2009, the Debtors commenced the D.C. Action with respect to the disallowance of their claims, assert that the

Intercompany Amounts are deposit accounts at JPMC, and claim damages relating to the Intercompany Amounts.

35. The Receiver's disallowance of the Debtors' claims to the Intercompany Amounts has not been vacated or overturned by the Court in the D.C. Action.

36. With the exception of signature cards for several of the smaller Accounts, JPMC has not located and believes there do not exist pre-petition any deposit account agreements, signature cards or any other documentation for the Accounts as deposit accounts. Notwithstanding that fact and while it continued to investigate whether such documents existed somewhere, JPMC was prepared to treat the Accounts as if they were deposit accounts so long as all rights of all parties, including JPMC's rights, were acknowledged and approved by order of this Court. Toward that end, on or about October 15, 2008, JPMC and the Debtors entered into a proposed stipulation (the "Account Stipulation") with respect to the Accounts that was filed with the Court for approval. The Account Stipulation was ultimately withdrawn following objections filed by certain creditors of the Receivership and the FDIC and was never entered by the Court.

37. Pursuant to the Account Stipulation, and before it was withdrawn, JPMC and the Debtors executed customary deposit account agreements regarding the Accounts on or about October 21, 2008 that provided, among other things, customary rights of setoff, recoupment and banker's liens to secure JPMC's rights to recover claims JPMC may have against the Debtors or their subsidiaries and affiliates from the funds on deposit in the Accounts.

38. After the execution of those documents but prior to December 19, 2008, JPMC acceded to a request of the Debtors to agree to the accrual of interest on the Intercompany Amounts as a sign of good faith in the event that it were ultimately determined that any of the Intercompany Amounts were in fact deposit accounts, without prejudice to its rights. Similarly,

JPMC agreed to the Debtors' further request that as a sign of "goodwill" it agree to release \$292 million of the Intercompany Amounts attributable to the Accounts of the non-debtor subsidiaries of WMI, without prejudice to its rights.

39. JPMC agreed to those requests from the Debtors in good faith, without prejudice to its rights, and on the understanding that the parties were working diligently to resolve open questions and issues with respect to the Intercompany Amounts. It did so in reliance on the Debtors' execution of account documentation for the Accounts that protected the interests of JPMC, and on the understanding that the Debtors would respect those rights. However, on or about December 19, 2008, after obtaining from JPMC the benefit of these concessions, the Debtors advised JPMC that the execution of those deposit account agreements on October 21, 2008, was only in anticipation of the proposed Account Stipulation and, since that stipulation had never been approved, the execution and delivery of the agreements was in error, unauthorized and considered by the Debtors to be null, void and without legal effect.

40. The execution and effectiveness of the account documentation executed by the Debtors on October 21, 2008 was a key factor in JPMC's decision to agree to the request that it accrue interest on the Intercompany Amounts and to the release of \$292 million to the Debtors and their non-debtor affiliates. While JPMC does not dispute that the Account Stipulation was never so ordered, to the extent that such documentation is ineffective, it should be ineffective for all parties and for all purposes, including the effectiveness of any post-petition book entries reflecting any portion of the Intercompany Amounts or Accounts as deposit liabilities and the release of any funds to the Debtors or their non-Debtor affiliates.

41. Although JPMC still has not discovered any pre-petition deposit account agreements, signature cards or other documentation for the Accounts that would have been

required of depositors that were not affiliates in order to treat the Accounts as deposit accounts (except for the signature cards on a few accounts as described above), it is nonetheless clear that if these are deposit accounts—not capital contributions—they were and are subject to the standard terms and conditions specified in the Master Business Account Disclosures and Regulations (the “MBA Policy”) of the Affiliated Banks.

42. The Disputed Accounts were associated with the DDA numbers provided by WMI. Most were so-called “On–Us Accounts”, the internal nomenclature for intercompany receivables that were understood to represent deposit accounts at the Affiliated Banks. Thus, the balances in these Accounts as of any point in time, unlike third party deposit accounts, were maintained both at the depository institution and as intercompany book entries on the general ledger of WMI and the Affiliated Banks that were its subsidiaries.

43. The decision on how to characterize an intercompany transaction was made by a single centralized Treasury group for WMI and all of its affiliates. That Treasury group was under the direct supervision of Robert Williams, currently the Chief Executive Officer of WMI.

44. To the extent the Intercompany Amounts and the Disputed Accounts reflect capital contributions, they are the property of JPMC under the terms of the P&A Agreement. To the extent they are deposit liabilities, they must be governed by standard terms and conditions governing unaffiliated deposit accounts, as a result of which they become subject to any liens, claims and interests that JPMC may have, and are also subject to setoff, recoupment or other offset.

(ii) Deposit Liabilities

45. Putting aside whether any account (much less an account belonging to WMI and containing \$3.67 billion) was ever created at WMB fsb, to the extent the Intercompany Amounts in the Disputed Accounts are not capital contributions and are in fact deposit liabilities of WMB or WMB fsb assumed by JPMC under the P&A Agreement, WMI and its subsidiaries, like every other Affiliated Bank depositor (expressly or otherwise), are bound by the standard terms and conditions for deposits at the Affiliated Banks.

46. The Accounts were utilized to settle intercompany obligations, including obligations arising from the payment and allocation of expenses among WMI and all of its subsidiaries, with intercompany allocations, payments and settlements on a periodic, usually monthly, basis. The balances on the Accounts were reflected on “On-Us Elevation Reports” generated on a monthly basis and on paper “Washington Mutual Internal Checking Detail” statements mailed to an employee of WMB on a monthly basis.

47. These Accounts were established by WMI or one of its non-bank subsidiaries at the Affiliated Banks pursuant to WMI’s Internal Corporate Demand Deposit Account Establishment and Usage Policy (the “On-Us Policy”). According to that policy, WMB had the right to use the Intercompany Amounts for, among other things, processing and clearing transactions between WMB and WMI or their respective subsidiaries, customers, vendors, or investors, again raising the question of whether the Intercompany Amounts represented a continuing deposit liability or should be characterized as a general reserve, a capital contribution or a form of intercompany advance to the Affiliated Banks. The On-Us Policy was silent regarding the rules and terms governing the acceptance by the Affiliated Banks of amounts under

the On-Us Policy as deposit accounts and services related to such accounts maintained at the Affiliated Banks.

48. WMI and the Affiliated Banks maintained a detailed, forty-page policy, the MBA Policy, that operated as a contract setting forth the terms and conditions governing all deposit accounts established at the Affiliated Banks and reflected the processes used to comply with applicable banking rules and regulations. The MBA Policy contained, among other things, a self-executing clause that made the terms of the policy binding upon all depositors, even those who did not expressly give permission, through consent implied by the opening and continued use of the deposit account.

49. The MBA Policy and its terms and conditions apply to and govern any accounts that are in fact deposit accounts at the Affiliated Banks, including the Accounts to the extent any are deposit accounts. WMI, as the sole shareholder and parent of the Affiliated Banks, is charged with knowledge and acceptance of the MBA Policy for any deposit account it maintained at the Affiliated Banks.

50. Any claim that WMI is entitled to terms more favorable to it than the terms imposed on third-party depositors under the MBA Policy would violate applicable federal law and regulations and be untenable. The provision of services, including deposit services, to WMI by its Affiliated Banks, under relevant banking laws and regulations, were required to have been conducted on terms and conditions no less favorable to the bank than would have been undertaken in a comparable transaction with an unaffiliated third party. Thus, these accounts, to the extent they reflect deposits, were required by law to be maintained on terms no less favorable to the Affiliated Banks than those clearly set forth in the MBA Policy.

51. The MBA Policy expressly grants the Affiliated Banks a right to offset any and all claims against all deposit account liabilities and reflects WMI's legal obligations to its banking affiliates. Specifically, the MBA Policy provides, "you agree we have the right to offset any account or asset of yours then held by us, by our sister bank, or any subsidiary of ours or our sister bank." Said differently, to the extent the Accounts and the Intercompany Amounts contained therein are deposit liabilities of the Affiliated Banks, the MBA Policy created a broad contractual right of setoff against the Accounts and the Intercompany Amounts for the benefit of the Affiliated Banks and their subsidiaries and reflected WMI's legal obligations.

52. Accordingly, to the extent that any of the Accounts or Intercompany Amounts are found by the Court to constitute deposit liabilities of JPMC as assignee of the Receiver, they are deposit liabilities subject to and created under the MBA Policy, and JPMC has a security interest in, lien rights against and rights of set-off and recoupment against the Intercompany Amounts as deposit liabilities under the MBA Policy and standard deposit account agreement terms and conditions applicable to all third-party depositors and as in effect at the time that the Affiliated Banks and their parent entered into the transactions creating and maintaining the Accounts.

(iii) JPMC Also Has an Express Security Interest in at Least One

Account

53. In addition, WMI entered into at least one specific security agreement with WMB (the "Security Agreement") whereby WMB received a security interest in and lien upon at least one of the Accounts in return for providing value to WMI. According to its terms, the Security Agreement "shall be binding upon [WMI] and its successors and assigns, and shall inure to the benefit of, and may be enforced by [WMB] and its successors, transferees, and

assigns.” This express security interest creates a lien to secure any and all intercompany obligations. JPMC is the successor, transferee or assignee of the Security Agreement and entitled to enforce its terms against WMI at least as to Intercompany Amounts associated with Account No. 177-8911206. A true and correct copy of the Security Agreement is attached as Exhibit A.

(iv) The September \$3.67 Billion Book Entry Transfer

54. Between September 19, 2008 and September 24, 2008, in the days immediately preceding the impending takeover of WMB by its regulators, WMI directed book entries purporting to transfer approximately \$3.67 billion (the “\$3.67 Billion Book Entry Transfer”) from WMB to WMB fsb. The entries direct the purported transfer from the triple 070-10450-009909 “On-U.s” Account No. 17900001650667, which is reflected in the internal On-U.s Elevation Report and the Internal Checking Detail as an account at WMB, to what WMI now claims was a deposit account at WMB fsb identified as triple 070-10441-0009909 “On-U.s” Account No. 44100000064234.

55. The general ledger entries for this transaction indicate that the entries were posted on September 24, 2008 with a “retro” date to September 19, 2008 and describe the \$3.67 Billion Book Entry Transfer as “WMI contributes to FSB.” WMI has asserted that the transaction was intended to be a transfer of funds from a WMI deposit account at WMB to a WMI deposit account at WMB fsb. JPMC disputes this characterization.

56. What is clear is at least the following: (i) no cash or other funds were actually moved to or received by WMB fsb in connection with the purported \$3.67 billion transfer; (ii) simultaneously with the purported transfer, the same supposed \$3.67 billion was

simultaneously loaned back to WMB; (iii) no account was properly established at WMB fsb; and (iv) it appears that no officer of WMB fsb authorized this highly suspect transaction.

57. JPMC also disputes the assertion that the purported funds in the Accounts belonged to WMI. As described herein, the funds have been identified as capital belonging to WMB, as well as tax amounts owned by WMB and now JPMC. In addition, in the weeks leading up to the receivership nearly a billion dollars in purported funds were transformed from an unsecured general ledger debt that was not supported by good funds or collateral—and had accumulated over several years until WMI began to deliberately and improperly siphon off cash from its subsidiaries—into purported deposit funds. This transformation was undertaken at the command of WMI, and is a substantial portion of the \$3.67 Billion Book Entry Transfer.

58. The Debtor's agreement to the terms of the Account Stipulation and the deposit agreements that provide JPMC on behalf of itself and its affiliates and subsidiaries with broad post-petition lien rights and rights of setoff and recoupment resulted in the entry, without prejudice, of the \$3.67 Billion Book Entry Transfer as a deposit liability on the books and records of JPMC. Having executed the standard deposit agreements with JPMC necessary to have this account reflected as a deposit at JPMC, and having understood that this was without prejudice to JPMC's rights, WMI should be estopped from taking the position that these account agreements were a mistake and not binding on it or from enjoying the benefit of having the Disputed Accounts reflected as deposit liabilities free of the lien and setoff rights created by those very same agreements. To the extent that any post-petition book entry is considered as relevant to the status of the purported deposit, any such resulting deposit should similarly be considered subject to the depository institution's rights, including post-petition contractual and statutory rights of setoff, that accompany the post-petition deposit.

59. WMB fsb would never have accepted a deposit liability from an unaffiliated third party without first receiving good funds, or at least not a deposit liability of the magnitude its parent now asserts was created on or about September 19, 2008 at a time when WMI alleges WMB was insolvent. The \$3.67 Billion Book Entry Transfer represented approximately 44% of the total deposits at WMB fsb, an increase of nearly 80% in total deposit liabilities. And, simultaneously with the purported transfer, the same “funds” were immediately loaned back to WMB. In no way was this an ordinary course transaction. And in no way was this transaction properly authorized, at least by WMB fsb.

60. Likewise, to the extent that the purported deposit funds were created by the manipulation of intercompany general ledger entries, master notes, and other intercompany book entries, the rights, interests and obligations of parties in and to the purported funds can only be determined in accordance with a full accounting for the related intercompany transactions. Accordingly, to the extent that the \$3.67 Billion Book Entry was originally created through intercompany transfers that were unauthorized, from sources not owned by WMI, or unaccompanied by the actual movement of funds, there could not have been a deposit liability at WMB.

61. Regardless of the fact that WMI and its affiliates may have operated a centralized cash management system for efficiency as members of the same corporate family, intercompany transfers, unaccompanied by actual movement of funds, cannot create obligations and liabilities as third parties when the corporate ownership link is broken. Because no cash or other funds were actually transferred by WMI to WMB fsb, the \$3.67 Billion Book Entry Transfer could not have created a deposit liability of WMB fsb to WMI without receipt of good funds. To the extent the \$3.7 Billion Book Entry Transfer is nonetheless deemed to create such a

liability, JPMC is entitled to a complete offset for WMI's failure to deliver good funds representing that \$3.67 billion deposit.

62. The \$3.7 Billion Book Entry Transfer was not a deposit account and WMI should be estopped from making any claims to the contrary.

63. Alternatively, to the extent any third party has or may have a claim against WMB fsb and/or JPMC with respect to or as a result of the \$3.7 Billion Book Entry Transfer, JPMC is entitled to be indemnified by WMI for any liability it may incur and is entitled to recover the amount by which it is or may be liable to any such third party from the Intercompany Amounts.

(v) The Tax Refunds and other Funds in the Accounts

64. A substantial portion of the Intercompany Amounts were, at the time of the Receivership and the Petition Date, in fact the property of the Affiliated Banks, representing tax payments made by the Affiliated Banks either as (i) accelerated payments of amounts previously claimed by WMI against the Affiliated Banks purportedly for taxes paid in prior years by WMI on behalf of the Affiliated Banks; or (ii) amounts transferred to WMI in payment of estimated or actual 2008 taxes.

65. In addition, after the Petition Date, at least approximately \$234 million of tax refunds due to WMB — the rights to which were purchased by JPMC as assets of WMB (the "Tax Refunds Received") — were paid to WMI. An amount equal to at least this \$234 million of the Tax Refunds Received are included in the balance of the Intercompany Amounts and the Accounts and should be paid over to JPMC as the lawful owner of those funds.

66. The Tax Refunds Received should not have been, and at various times were not in fact, recorded in any way as a deposit liability. The Tax Refunds Received were and are property of JPMC purchased under the P&A Agreement.

(vi) Section 9.5 of the P&A Agreement

67. To the extent any of the Accounts are deposit liabilities assumed by JPMC, pursuant to Section 9.5 of the P&A Agreement, “[a]t any time, the [FDIC] may, in its discretion, determine that all or any portion of any deposit balance assumed by [JPMC] pursuant to this Agreement does not constitute a “Deposit” . . . and may direct [JPMC] to withhold payment of all or any portion of any such deposit. Upon such direction, [JPMC] agrees to hold such deposit and not make payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. [JPMC] shall be obligated to reimburse the [FDIC], . . . for the amount of any deposit balance or portion thereof paid by [JPMC] in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance, the payment of which was withheld pursuant to this Section.”

68. The FDIC has not, to date, notified JPMC that all or any portion of the Intercompany Amounts or Disputed Accounts are or are not Deposit Liabilities within the meaning of the P&A Agreement. Nor has the FDIC directed JPMC to withhold payment on all or any portion of the Disputed Accounts. JPMC requests that, to the extent this Court orders JPMC to pay any portion of the Intercompany Amounts or Accounts to the Debtors or into the registry of this Court, that the Court do so by way of interpleader under Rule 7022, releasing JPMC from any liability for such amounts to any person and preserving the rights of all parties and all possible claimants with respect to those funds (including JPMC). Specifically, JPMC requests a finding that it only has to pay or credit the Accounts or the Intercompany Amounts

once and that this Court's determination regarding ownership, character and rights in or to the Intercompany Amounts or the Accounts is final so that JPMC has no further liability in any capacity for the Intercompany Amounts or Accounts except as may be determined by this Court in this proceeding.

RELIEF REQUESTED BY JPMC

**Count One
(Against WMI only)**

(Declaratory Judgment: Intercompany Amounts in Disputed Accounts)

69. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

70. In this action and in connection with these Chapter 11 cases, WMI has asserted that the Intercompany Amounts in the Disputed Accounts are its property.

71. WMI previously asserted a claim to such Intercompany Amounts in the Receivership and its claims were disallowed by the Receiver. WMI is currently challenging the disallowance of its claims in the D.C. Action.

72. Absent a determination by the Court in the D.C. Action that the disallowance of WMI's claims to the Intercompany Amounts was improper, WMI is bound by the disallowance of its claims in the Receivership and has no right to continue to claim the Disputed Amounts as its property as against JPMC or anyone else.

73. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

74. JPMC requests a declaratory judgment finding that (i) Debtors are bound by the disallowance of their claim to the Intercompany Amounts and have no right to assert such

a claim against JPMC to the same assets, and (ii) any challenge by Debtors to the disallowance of their claim to the Intercompany Amounts must proceed in the D.C. Action.

Count Two
(Against WMI only)
(Declaratory Judgment: \$3.7 Billion Book Entry Transfer)

75. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

76. WMI has asserted that the \$3.7 Billion Book Entry Transfer creates a deposit liability owed to it by WMB fsb, now JPMC. JPMC disputes that there is a valid deposit liability due to Debtors as the result of the \$3.7 Billion Book Entry Transfer or otherwise.

77. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

78. JPMC requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of or interest in the \$3.7 Billion Book Entry Transfer through the D.C. Action they elected to commence. In the alternative, JPMC requests a declaratory judgment determining that there is no valid deposit liability due to Debtors as a result of the \$3.7 Billion Book Entry Transfer.

Count Three
(Against WMI only)
(Declaratory Judgment: Setoff, Recoupment, and Other Equitable Limitations)

79. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

80. To the extent that JPMC has any liabilities to Debtors, including deposit account liabilities, it is entitled to: (i) recoup and/or setoff all such amounts under the MBA Policy and/or any other applicable terms and conditions governing those liabilities or deposit

accounts; (ii) imposition of a constructive trust for the amount of all such liabilities over any funds of Debtors it possesses; and (iii) enforce any security interest determined to apply to the funds of the Debtors. Debtors dispute that JPMC has these rights.

81. The amounts owed to JPMC include, but are not limited to, approximately \$234 million in tax refunds deposited in the Accounts and due to WMB, which the Debtors have claimed as their own, the intercompany receivables of \$275 million due from WMI to WMB, and any amounts awarded by the Court under this Complaint.

82. There is substantial evidence that, contrary to the Debtors' unsupported assertions, at the time of the receivership and at all relevant times before the receivership, WMI, WMB, and WMBfsb were solvent. Indeed, the OTS found that "WMB met the well-capitalized standards *through the receivership date.*" (OTS Fact Sheet 9/25/2008 (emphasis added).)

83. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

84. JPMC requests a declaratory judgment determining its right to setoff, recoupment, imposition of a constructive trust, and/or enforcement of its security interests.

Count Four
(Against WMI only)
(Fraud)

85. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

86. JPMC asserts this counterclaim solely in the event it is determined that the \$3.67 Billion Book Entry Transfer created a deposit liability at WMB fsb.

87. WMI directed the \$3.67 Billion Book Entry Transfer with knowledge that WMB was not a safe and sound institution and would shortly be seized by the regulators.

Indeed, in the days leading up to the \$3.67 Book Entry Transfer, WMB was experiencing rapid deposit outflows from unaffiliated depositors and government regulators had informed WMI that it needed to raise additional capital for WMB in order to avoid receivership. Doreen Logan, WMI's Controller, has already submitted a declaration on WMI's behalf stating that WMI's purpose for the \$3.67 Billion Book Entry Transfer was to try to move funds from WMB to a more well-capitalized institution. This purpose was not disclosed to independent officers or directors of WMB fsb or other individuals who were empowered to object to the \$3.67 Billion Book Entry Transfer, rather the decision was made by WMI.

88. To the extent any portion of the \$3.67 billion reflected a deposit liability to WMI at WMB prior to the purported transfer, upon WMB's failure that liability would have been subject, among other things, to reduction or elimination based upon government insurance levels and/or because it was an obligation of a failed institution to a parent, to claims of setoff and recoupment and offset, to potential claims of WMB's creditors, and to various avoidance powers of the FDIC as Receiver. Thus, the purpose on WMI's part for engaging in this fraudulent transaction was to attempt to maximize WMI's ability to keep for itself any deposit balance free and clear of these avenues of offset, reduction and conflicting claims. However, in doing so, WMI sought to shift the burden of WMB's inevitable failure onto WMB fsb without disclosing to WMB fsb that it was doing so or giving WMB fsb any say or choice in the matter.

89. The \$3.67 Billion Book Entry Transfer did not involve any actual movement of funds to WMB fsb. WMI did not deposit any actual funds with WMB fsb in connection with the purported transfer of this \$3.67 billion, and no funds to support such a deposit balance were deposited at WMB fsb from any other source.

90. Indeed, to the contrary, in conjunction with the purported \$3.67 Billion Book Entry Transfer to WMB fsb, WMI simultaneously booked other entries that purported to reflect the immediate loan of the same \$3.67 billion purportedly being transferred right back to WMB. In other words, without any movement of funds whatsoever, WMI purported to transform a purported \$3.67 billion liability owed to it by WMB – an allegedly insolvent institution – into a \$3.67 billion liability of WMB fsb to it, without ever transferring a single penny to WMB fsb. At the same time, WMI purported to leave WMB fsb holding the bag for WMB’s pending failure as a bank with a “loan” to WMB of the same \$3.67 billion that WMI knew WMB would never be in a position to repay in the ordinary course, but rather would be subject to a receivership process.

91. This round-trip set of book entries was a complete fraud. Nothing about the \$3.67 Billion Book Entry Transfer was done in the ordinary course or for business purposes aligned with the safety and soundness of the banking institutions. At the time of the purported Transfer, no WMI account existed at WMB fsb into which WMI was able to direct such a Transfer. In its rush to make this fictitious transfer, WMI first purported to make a transfer to another account at WMB, which did not accomplish the purpose of the transaction. Then, when this impediment was discovered, WMI purported to direct the opening of a new account at WMB fsb. No account documentation was created at WMB fsb for this supposed new account containing an unprecedented \$3.67 billion. And, since no funds actually moved to WMB fsb, WMI also had to cause the \$3.67 billion to be recorded as a credit to a WMB fsb account under circumstances where no bank would ever make such a credit to an unaffiliated depositor. Then, since no funds were being moved (indeed, it may be that no such funds even existed), WMI had to arrange for the loan of the purportedly transferred funds back to WMB, the place from which

the funds were supposedly coming in the first place. But WMI's and WMB's and WMB fsb's internal documentation would not permit this, which again required WMI to purportedly raise the loan limit for intercompany loans to enable this fabricated transaction to appear to occur. The transaction violated numerous banking laws, rules and regulations, as well as fundamental principles of safety and soundness.

92. WMI did not make any disclosures to WMB fsb in connection with the \$3.67 Billion Book Entry Transfer. WMI did not seek WMB fsb's consent or approval of this Transaction or any aspect of it. WMI did not seek WMB fsb's consent to acknowledge a \$3.67 billion deposit prior to the receipt of good funds. WMI did not seek WMB fsb's consent or approval to "loan" the supposed deposit back to WMB. WMI did not disclose to WMB fsb that it would never be depositing good funds to cover the supposed \$3.67 billion deposit. It never disclosed to WMB fsb that WMB (as WMI now alleges) was not financially able to repay the money that was supposedly being loaned back to it by the series of book entries because of the impending receivership. WMI never disclosed its knowledge that federal banking regulators were about to seize WMB or its knowledge that it was unable to raise sufficient capital in order to keep WMB operating. And it never disclosed to WMB that it was engaging in this transaction in order to try to maximize what WMI would be able to keep when WMB failed, and that the consequence of that goal would be to cause WMB fsb to incur a corresponding loss.

93. In addition, in connection with the \$3.67 Billion Book Entry Transfer, WMI knew that the amount purportedly being transferred contained at least \$234 million in tax refunds that belonged to WMB and not to WMI. WMI did not disclose to WMB fsb that these amounts did not belong to WMI, and thereby sought to create a deposit liability of WMB fsb to WMI with amounts that did not belong to WMI at all.

94. Further, in the weeks leading up to the receivership, at least \$1 billion in purported funds associated with the \$3.67 Billion Book Entry Transfer were invented by WMI when it directed that an unsecured general ledger debt allegedly due to it from WMB—that was not supported by good funds or collateral—be converted into a purported deposit liability due to WMI. WMI did not do this in the ordinary course of business, but because it recognized that WMB was shortly going to be seized by the regulators.

95. WMI intentionally did not disclose these facts to, and willfully concealed them from, WMB fsb.

96. The concealed and omitted facts were material. WMB fsb—indeed no financial institution—would have accepted a \$3.67 billion deposit and credited it as a deposit liability prior to the receipt of good funds or loaned \$3.67 billion to WMB without any collateral or security or reasonable likelihood of normal repayment under the circumstances given the pending receivership.

97. JPMC is the successor to WMB fsb by merger and is entitled to recover any damages caused by WMI's fraud.

98. JPMC has been damaged in an amount to be proven at trial.

99. WMI acted with fraud, malice and/or oppression and, as a result, JPMC is entitled to an award of punitive damages.

Count Five
(Against All Defendants)
(Interpleader Pursuant to Bankruptcy Rule 7022)

100. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

101. Pursuant to the terms of the P&A Agreement, JPMC, WMI, and the FDIC have asserted, and may assert, competing claims to any funds that constitute deposit liabilities and JPMC may be exposed to double liability if it were to pay these claims to the wrong party.

102. JPMC seeks to interplead any remaining funds that constitute deposit liabilities pursuant to Bankruptcy Rule 7022, less any attorneys' fees and costs, so that all claims to the amounts can be adjudged and the funds can be properly disbursed.

Count Six
(Against WMI only)
(Declaratory Judgment as to Other Assets)

103. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

104. In addition to the Intercompany Amounts in the Disputed Accounts, Debtors have improperly asserted claims to certain assets that belong to JPMC and not to Debtors. These assets (the "Other Assets"), and the basis for JPMC's ownership of these assets, are described more fully in the complaint filed by JPMC in the JPMC Adversary Proceeding, *JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.), which is incorporated herein fully by reference.

105. These Other Assets include the following: (i) intercompany amounts in certain additional accounts that are not included in Debtors' complaint in this action; (ii) certain trust securities in an aggregate face amount of approximately \$4 billion (the "Trust Securities") (described in JPMC Adversary Complaint ¶¶ 41-56); (iii) tax refunds that WMB is or was entitled to receive, including tax refunds that are owned by and attributable to the tax attributes of WMB but that may be nominally payable to WMI as agent for WMB because of the form in which tax returns were filed by the WaMu Group (described in JPMC Adversary Complaint ¶¶

57-92); (iv) the proceeds of goodwill litigation (described in JPMC Adversary Complaint ¶¶ 125-129); (v) ownership of certain Rabbi trusts and benefit plans (described in JPMC Adversary Complaint ¶¶ 130-148); (vi) ownership of certain life insurance policies (described in JPMC Adversary Complaint ¶¶ 149-157); (vii) ownership of certain class B shares of common stock in Visa, U.S.A., Inc. (described in JPMC Adversary Complaint ¶¶ 158-171); and (viii) ownership or rights to certain intellectual property, contracts and intangible assets (described in JPMC Adversary Complaint ¶¶ 172-179).

106. In counterclaims filed in the JPMC Adversary Proceeding, in its complaint in the D.C. Action, and in connection with these Chapter 11 cases, WMI has asserted that the Other Assets are its property.

107. WMI previously asserted a claim to some or all such Other Assets in the Receivership and its claims were disallowed by the Receiver. WMI is currently challenging the disallowance of its claims in the D.C. Action.

108. Absent a determination by the Court in the D.C. Action that the disallowance of WMI's claims to the Other Assets was improper, WMI is bound by the disallowance of its claims in the Receivership and has no right to continue to claim such Other Assets as its property as against JPMC or anyone else.

109. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

110. JPMC requests a declaratory judgment finding that: (i) Debtors are bound by the disallowance of their claim to the Other Assets and have no right to assert such a claim against JPMC to the same assets; and (ii) any challenge by Debtors to the disallowance of their claim to the Other Assets must proceed in the D.C. Action.

Count Seven
(Against All Defendants)
(Declaratory Judgment as to Ownership of Other Assets)

111. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

112. As set forth above, JPMC contends that, pursuant to the P&A, it purchased the Other Assets. The Debtors have disputed JPMC's ownership of these Other Assets in this bankruptcy case, in their Schedules, in their answer and counterclaims in the JPMC Adversary Proceeding, and in the D.C. Action. Resolution of these disputes is a necessary predicate to any determination of solvency or setoff.

113. The FDIC is a party to the P&A Agreement, has certain indemnification obligations to JPMC under that Agreement, is the Receiver of WMB, and has an interest in the determination of what assets were owned by WMB, seized in the receivership, and transferred to JPMC pursuant to the P&A Agreement.

114. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

115. To the extent it is found that Debtors are not bound by the disallowance of their claim to the Other Assets in the Receivership or obligated to proceed with any claim to the Other Assets through the D.C. Action, JPMC requests a declaratory judgment determining that the Other Assets were purchased by JPMC from the FDIC as Receiver under the P&A Agreement and belong to JPMC.

Count Eight
(Against WMI only)
(Unjust Enrichment)

116. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

117. The Debtors would be unjustly enriched if they retained the Other Assets.

118. Thus, to the extent the Court does not enter a declaratory judgment determining that the Other Assets are assets purchased by and belonging to JPMC, JPMC requests that the Court establish a constructive trust for the benefit of JPMC consisting of: (i) the value recognized by Debtors as a result of the treatment of the Trust Securities as core capital; (ii) the tax refunds received by and/or deductions recognized by WMI to which WMB is entitled; (iii) the value of the assets of the Rabbi trusts and the life insurance policies; (iv) amounts necessary to reimburse JPMC for amounts it contributed to any benefit plans; (v) to the extent JPMC is not fully protected against liabilities associated with the reorganization of Visa, the Visa shares; and (vi) the value of the intellectual property, contracts and intangible assets.

Count Nine
(Against WMI only)
(Breach of Contract re: Trust Securities)

119. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

120. WMI assumed a direct obligation to WMB upon entering into the Contribution Agreement (as defined in the JPMC Adversary Proceeding Complaint) to immediately contribute and transfer the Trust Securities to WMB following the conditional exchange. In the alternative, WMB was the third party beneficiary of WMI's commitment to the OTS and the FDIC under the Contribution Agreement. WMI also assumed a direct obligation to

WMB pursuant to the Assignment Agreement (as defined in the JPMC Adversary Proceeding Complaint).

121. To the extent the Assignment Agreement is interpreted as leaving WMI with anything other than bare legal title, WMI breached the Contribution Agreement. WMI further breached the Contribution Agreement and the Assignment Agreement by refusing to assist JPMC in obtaining registered ownership of the Trust Securities.

122. JPMC (as successor in interest to WMB), has suffered, and will suffer, substantial monetary damages as a proximate result of WMI's breach of the Contribution Agreement and the Assignment Agreement.

**Count Ten
(Against WMI only)
(Administrative Expenses)**

123. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

124. To the extent the Court accepts WMI's claims of ownership of any of the Pension and 401(k) Plans or other assets and JPMC has made payments and incurred expenses in connection with these assets, JPMC is entitled to reimbursement from Debtors of all post-petition expenses it has incurred and payments it has made on account of those assets.

125. To the extent JPMC incurs any liability or suffers any loss as the result of conduct by Debtors after the Petition Date, including conduct by the Debtors as the sponsor of any of the Pension and 401(k) Plans, JPMC is entitled to post-petition administrative claim for those amounts.

**Count Eleven
(Against WMI only)
(Indemnification)**

126. JPMC realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

127. Claims have been threatened against JPMC arising out of or relating to the acts, omissions or conduct of Debtors prior to the Petition Date. To the extent that any claim is asserted against JPMC as a result of such matters, JPMC is entitled to be indemnified and held harmless by the Debtors for any loss, damage or liability JPMC might incur.

PRAYER FOR RELIEF

WHEREFORE, JPMC respectfully requests that this Court grant judgment:

- (i) determining that Debtors are bound by the disallowance of their claims to the Intercompany Amounts by the Receiver and must proceed, if at all, on claims of ownership of such amounts in the D.C. Action in accordance with Title 12;
- (ii) declaring that the legal title and all beneficial interest in each of the assets described in the Debtors' complaint in this action belong to JPMC;
- (iii) awarding JPMC damages as a result of WMI's fraud;
- (iv) awarding JPMC prejudgment interest and punitive damages to the extent permitted by law;
- (v) determining that JPMC is entitled to setoff, recoup, or impose a lien against any liabilities that JPMC may owe to Debtors, for all amounts JPMC may be entitled to under this Complaint;

(vi) determining that any and all interested persons, entities or agencies are restrained from instituting any actions against JPMC for recovery of any amounts being interplead with the Court;

(vii) determining that JPMC be discharged from any and all liability with regard to claims to the interpleaded funds;

(viii) declaring that the legal title and all beneficial interest in each of the assets described in these Counterclaims belong to JPMC;

(ix) ordering Debtors to deliver the assets described in these Counterclaims to JPMC;

(x) ordering Debtors to take steps to allow, and where appropriate, direct third parties to act in accordance with JPMC's ownership of its assets;

(xi) awarding JPMC damages as a result of Debtors' failure to transfer, or facilitate the transfer of, assets JPMC acquired under the P&A Agreement;

(xii) ordering Debtors to indemnify JPMC for all losses JPMC incurs as a result of Debtors' pre-petition actions;

(xiii) requiring Debtors to reimburse JPMC for all amounts by which Debtors have been unjustly enriched;

(xiv) awarding JPMC damages for losses resulting from Debtors' post-petition actions;

(xv) granting JPMC an administrative claim for amounts paid into or on account of the Pension and 401(k) Plans and other assets;

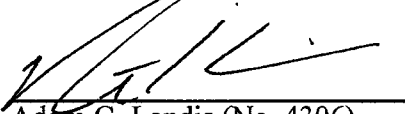
(xvi) awarding JPMC its attorneys' fees and costs; and

(xvii) awarding JPMC such other and further relief as this Court deems just and

proper.

Dated: July 6, 2009
Wilmington, Delaware

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
<i>In re:</i>	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
Debtors.	:	(Jointly Administered)
	X	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	Adv. Pro. No. 09-50934 (MFW)
Plaintiffs,	:	
v.	:	Re: 31460
JPMORGAN CHASE BANK, N.A.,	:	
Defendant.	:	
	X	

**ORDER DENYING (A) MOTION OF DEFENDANT
JPMORGAN CHASE BANK, N.A. TO STAY
AND (B) MOTION OF INTERVENOR-DEFENDANT
FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER, TO STAY OR DISMISS ADVERSARY PROCEEDING**

Upon (a) the motion, dated June 1, 2009 (the "JPMC Motion") [Docket No. 31], of JPMorgan Chase Bank, National Association ("JPMorgan") for an order staying, in the event it is not dismissed in its entirety, the above-captioned adversary proceeding (the "Adversary Proceeding") commenced by Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors"), and (b) the motion of intervenor-defendant Federal Deposit

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Insurance Corporation, as receiver for Washington Mutual Bank (the "FDIC-Receiver") to stay, or in the alternative, dismiss the Adversary Proceeding [Docket Entry No. 29, Exhibit A] (the "FDIC-R Motion", and together with the JPMC Motion, the "Motions"), all as more fully set forth in the Motions; and the Washington Mutual, Inc. Noteholders Group [Docket No. 38] and the Debtors [Docket No. 39] having each filed an opposition to the Motion on June 15, 2009; and a joinder in the Debtors' opposition having been filed by the Official Committee of Unsecured Creditors on June 15, 2009 [Docket No. 40] (collectively, the "Opposition Papers"); and the Court having jurisdiction to consider the Motions, the Opposition Papers, and all related filings in connection therewith and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having granted by separate Order the motion of the FDIC-Receiver to intervene in the Adversary Proceeding; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 to consider the Motions; and due and proper notice of the Motions and the Opposition Papers having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motions, the Opposition Papers, and related filings on June 24, 2009 (the "Hearing"); and upon the record of the Hearing and for the reasons set forth on the record of the Hearing, it is hereby

ORDERED that the Motions and the relief requested therein are denied in their entirety; and

ORDERED that this Order having resolved all matters for which the intervention of the FDIC-Receiver in this Adversary Proceeding was granted, no further pleading or response shall be required from the FDIC-Receiver in this Adversary Proceeding.

Dated: Wilmington, Delaware

July 1, 2009

Mary F. Walrath

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

	X	
<i>In re:</i>	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> ¹	:	Case No. 08-12229 (MFW)
	:	(Jointly Administered)
Debtors.	:	
	:	
	X	
JPMORGAN CHASE BANK NATIONAL ASSOCIATION,	:	Adv. Pro. No. 09-50551 (MFW)
Plaintiff,	:	
v.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.	:	<i>Re: 65 & 25</i>
Defendant for all claims	:	
-and-	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Additional Defendant for Interpleader claim	:	
	X	

**ORDER DENYING MOTION OF FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER, TO STAY ADVERSARY PROCEEDING**

Upon the motion, dated June 1, 2009 (the "Motion") [Docket No. 25], of defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank (the "FDIC-Receiver") for an order staying the above-captioned adversary proceeding pending

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

entry of judgment in an action pending in the United States District Court for the District of Columbia, styled Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation, Case 09-cv-00533 (RMC), all as more fully set forth in the Motion and the memorandum of law filed in support of the Motion [Docket No. 26]; and defendant JPMorgan Chase Bank, N.A. ("JPMC") having filed a response in support of the Motion [Docket No. 38]; and the Debtors having filed an opposition to the Motion on June 15, 2009 (the "Opposition") [Docket No. 36]; and a joinder in the Opposition having been filed by the Official Committee of Unsecured Creditors on June 15, 2009 (the "Joinder") [Docket No. 37]; and the Court having jurisdiction to consider the Motion, the Opposition, the Joinder and all related filings in connection with the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 to consider the Motion; and due and proper notice of the Motion, the Opposition, and the Joinder having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motion, the Opposition, the Joinder, and related filings on June 24, 2009 (the "Hearing"); and upon the record of the Hearing and for the reasons set forth on the record of the Hearing, it is hereby

ORDERED that the Motion and the relief requested therein is denied.

Dated: Wilmington, Delaware

July 6, 2009



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X		
In re:	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
-----X		
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Plaintiff,	:	Adversary No. 09-50551 (MFW)
	:	
v.	:	
	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
	:	
Defendants and Counterclaimants,	:	
	:	
and	:	
	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
	:	
Additional Defendant for Interpleader claim.	:	Re: Docket No. 41
-----X		

**DEBTORS' OPPOSITION TO THE MOTION OF
JPMORGAN CHASE BANK, N.A. TO DISMISS DEBTORS' COUNTERCLAIMS**

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share their principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

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PRELIMINARY STATEMENT

JPMorgan Chase Bank, National Association (“JPMC”) has refused to withdraw its Motion to Dismiss Debtors’ Counterclaims (the “Motion to Dismiss”) (Docket No. 41) despite the fact that it relies on the identical argument that the Court specifically rejected when it denied JPMC’s Motion for Stay of Debtors’ Adversary Proceeding (the “Motion to Stay”) (Docket No. 31). Just as it has previously, JPMC argues that the counterclaims asserted by Plaintiffs Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMI Investment,” and together with WMI “Debtors” or “Plaintiffs”), are barred by FIRREA section 1821(d)(13)(D). The Court has already concluded after full argument and briefing, however, that the FIRREA jurisdictional bar does not apply to Debtors’ counterclaims because they are not asserted against the Federal Deposit Insurance Corporation (the “FDIC”) and do not seek assets in receivership. Accordingly, JPMC’s Motion to Dismiss must be denied. Furthermore, by persisting with its Motion to Dismiss despite the fact that its position has already been rejected, JPMC has imposed unnecessary burdens both on the Debtors and on the Court. Debtors therefore respectfully request that the Court direct JPMC to pay Debtors’ fees incurred responding to the present motion.

SUMMARY OF ARGUMENT

JPMC relies on the identical argument in support of its Motion to Dismiss as it advanced previously in support of its unsuccessful Motion to Stay. Specifically, JPMC argues that Debtors’ claims against JPMC to recover assets which are not in receivership are somehow barred under section 1821(d)(13)(D) of FIRREA. The Court rejected that precise argument when it denied the Motion to Stay, holding that the FIRREA jurisdictional bar does not apply to Debtors’ counterclaims because those claims are directed to “property that is no longer in the hands of the FDIC.” (Tr. 6/24/09 at 93.) By asking that the Court revisit this settled issue,

JPMC is openly pursuing a strategy of inefficiency and delay. The Court's ruling is the law of the case, and JPMC's Motion to Dismiss must be denied.

The Court's ruling, in addition to standing as law of the case, was plainly correct. As Debtors argued in their Opposition to JPMC's Motion to Stay, it is settled in the Third Circuit that claims asserted against a successor bank pertaining to assets transferred out of receivership are not subject to the jurisdictional bar under FIRREA. *See Rosa v. RTC*, 938 F.2d 383 (3d Cir. 1991); *Hudson United Bank v. Chase Manhattan Bank of Connecticut, N.A.*, 43 F.3d 843 (3d Cir. 1994). That is exactly the scenario now before this Court. By JPMC's own account, Debtors have asserted a series of claims pertaining to assets "sold to JPMC by the FDIC" pursuant to the Purchase and Assumption Agreement Whole Bank, dated September 25, 2008 (the "P&A Agreement"). (Mot. to Dismiss at 10.) As the Court has already recognized, such an action does not implicate FIRREA, but falls squarely within the Court's exclusive jurisdiction.

JPMC also makes the flawed argument that Debtors' claims, even to the extent that they are not barred by any specific provision of FIRREA, must be dismissed on the basis that they conflict with some general "federal banking law." The Supreme Court has expressly held, however, that there is no federal common law that supplements the specific statutory provisions of FIRREA. *See O'Melveny & Myers v. FDIC*, 512 U.S. 79 (1994). Congress has determined precisely how far to extend the jurisdictional bar under that statute, and, as discussed and ruled upon by the Court, that bar simply does not apply here. Furthermore, the only remaining FIRREA provision that JPMC invokes, section 1828(u), includes specific language—language that JPMC egregiously redacts from its purported quotation of the statute—that renders that provision plainly inapplicable to the situation before this Court.

JPMC has now pursued the identical argument from different angles in multiple motions, but its position ultimately leads to the same dead end. As the Court has already determined, FIRREA is not a bar to Debtors' Counterclaims against JPMC. By nevertheless continuing to press this issue, including in its Motion to Dismiss and in its separate Motion to Withdraw the Reference, JPMC is imposing unreasonable burdens both on the Debtors and on the courts. JPMC's only apparent purpose in doing so, moreover, is continued delay and continued use of funds that should be paid to Debtors. Debtors therefore respectfully request that the Motion to Dismiss be denied, and that JPMC be directed to pay the costs incurred by Debtors in defending this motion.

BACKGROUND

A. The DC Action

On September 25, 2008, WMB was closed and placed into receivership with the FDIC. On the same day, the FDIC sold substantially all of WMB's assets, including the stock of its subsidiary WMB fsb, to JPMC for \$1.88 billion, pursuant to the P&A Agreement. As required by section 1821(d) under FIRREA, the FDIC set December 30, 2008, as the last day to file claims against WMB or the FDIC in its capacity as receiver. On December 30, 2008, Debtors filed a series of claims against WMB in receivership.

On January 23, 2009, the FDIC disallowed Debtors' claims in a one-page Notice of Disallowance. Because FIRREA required Debtors to challenge the disallowance of claims within 60 days, Debtors filed a Complaint in the District Court for the District of Columbia, on March 20, 2009, challenging the FDIC's disallowance of claims (the "DC Action").² The FDIC

² Once a creditor files a claim with the agency, the FDIC has 180 days to either allow or disallow it. 12 U.S.C. § 1821(d)(5)(A)(i). A claimant who is dissatisfied with the agency's determination then has 60 days either to request administrative review or to file (footnote continued)

in its capacity as receiver issued its Answer to the Complaint, along with a Motion to Dismiss, on June 11, 2009.

B. The Bankruptcy Proceedings

On September 26, 2008, WMI and WMI Investment each commenced a voluntary case pursuant to chapter 11 of the Bankruptcy Code in this Court, and there are now two pending adversary proceedings. First, on March 24, 2009, JPMC filed an action asserting claims to assorted assets that it allegedly purchased pursuant to the P&A Agreement. On May 22, 2009, Debtors filed an Answer and Counterclaims asserting, among other things, affirmative claims under the Bankruptcy Code's avoidance powers and under state law for the avoidance of potentially more than \$10 billion in Debtors' assets fraudulently or preferentially transferred to JPMC prior to the commencement of the Debtors' chapter 11 cases pending before this Court (the "Counterclaims").

The second adversary proceeding is the Turnover Action, which Debtors filed on April 27, 2009, asserting an "unquestionable right" to approximately \$4 billion in deposits and demanding the return of those funds pursuant to the turnover provision of the Bankruptcy Code, 11 U.S.C. § 542. JPMC filed a Motion to Dismiss the Turnover Action on May 13, 2009, arguing primarily that turnover is unavailable on grounds that there is a genuine dispute as to ownership of the deposits. The Court denied that motion at the hearing held on June 24, 2009 (the "June 24 Hearing"), finding that Debtors' complaint and accompanying exhibits describe a

suit on the claim. 12 U.S.C. § 1821(d)(6)(A). The claimant is authorized to bring suit either in "the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia." *Id.*

mature debt owed by JPMC to Debtors, without any indication of a genuine dispute as to “the title to the . . . deposit accounts.”³ (Tr. 6/24/09 at 117.)

C. The Court’s Ruling Denying JPMC’s Motion to Stay and Rejecting JPMC’s Current Position

The Court recently denied JPMC’s Motion to Stay, along with a similar motion by the FDIC, in which both parties argued that the Turnover Action and Debtors’ Counterclaims are barred under section 1821(d)(13)(D). The Court rejected this argument at the June 24 Hearing. Relying on the Third Circuit’s decisions in *Rosa* and *Hudson*, the Court held that FIRREA applies only with respect to claims against the FDIC for assets in receivership, and that Debtors’ claims against a successor bank, JPMC, are therefore properly before this Court and should not be stayed. (Tr. 6/24/09 at 93-94.) The Court also rejected arguments by the FDIC and JPMC invoking the “first filed rule” as an alternative basis to defer to the DC Action, reasoning that the Court has “exclusive jurisdiction to decide what is property of the estate” and that the DC Action and the Adversary Proceedings involve different claims. (Tr. 6/24/09 at 94-95.) Shortly after rejecting the stay motions, the Court issued a written opinion authorizing Debtors to proceed with Rule 2004 discovery.

JPMC filed its Motion to Dismiss prior to the Court’s recent ruling, and its position is based on the identical argument that the Court has now rejected—*i. e.*, that section 1821(d)(13)(D) bars Debtors’ Counterclaims against JPMC. (Mot. to Dismiss at 13-21.) In light

³ On May 19, 2009, Debtors filed their Motion for Summary Judgment in the Turnover Action, in which they present extensive and compelling evidence demonstrating that they in fact own the deposits and that they are entitled to have JPMC promptly remit those funds. Unless the parties agree upon an alternative schedule, JPMC is due to enter its opposition to that motion within 21 days of the Court’s ruling at the June 24 Hearing. (See Order Granting Expedited Motion of Defendant JPMC for Additional Time to Respond to Debtors’ Summary Judgment Motion.)

of the Court's ruling that the bar does not apply, Debtors contacted JPMC, by email dated June 26, 2009, and requested that it withdraw the Motion to Dismiss. JPMC declined to do so without explanation, and has elected instead to continue to pursue an argument that the Court has specifically rejected. As set forth below, the Court's decision is the law of the case, and the Motion to Dismiss must therefore be denied. Furthermore, JPMC's suggestion that Debtors' Counterclaims are somehow precluded by unarticulated "banking law" generally, even to the extent that there is no specific bar under FIRREA, is entirely without merit and must also be rejected.

ARGUMENT

I. THE COURT HAS ALREADY REJECTED JPMC'S POSITION

A. The Court's Holding Rejecting JPMC's Proposed Application of the FIRREA Jurisdictional Bar is the Law of the Case

The law of the case doctrine "limits relitigation of an issue once it has been decided" in an earlier stage of the same litigation. *In re Cont'l Airlines, Inc.*, 279 F.3d 226, 232 (3d Cir. 2002); see *Fagan v. City of Vineland*, 22 F.3d 1283, 1290 (3d Cir. 1994) ("The law of the case doctrine limits the extent to which an issue will be reconsidered once the court has made a ruling on it."). As the Third Circuit has emphasized, the doctrine promotes finality, consistency, and judicial economy. See *In re City of Phila. Litig.*, 158 F.3d 711, 717-18 (3d Cir. 1998). In light of these considerations, courts "should be loathe" to revisit issues that have already been decided "in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'" *Lambert v. Blackwell*, 387 F.3d 210, 237 (3d Cir. 2004) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988)).

In its ruling denying JPMC's Motion to Stay, this Court unequivocally held that the jurisdictional bar set forth in section 1821(d)(13)(D) does not apply to Debtors' Counterclaims against JPMC. The Court explained its holding,

I do not find FIRREA is a jurisdictional bar to the Debtors' claims to property that is no longer in the hands of the FDIC as receiver, but [is] in the hands of JPMC. I think that's clear from the Third Circuit precedent, which is binding on this Court. *Hudson* made clear that FIRREA only bars claims against a receiver or an institution in receivership.

(Tr. 6/24/09 at 93.) JPMC's argument in its Motion to Dismiss, which it filed prior to the June 24 Hearing, makes the identical argument that the Court rejected. (Mot. to Dismiss at 15 ("Title 12 . . . bars this Court from adjudicating Debtors' counterclaims, those counterclaims must be dismissed for lack of subject matter jurisdiction".)) The Court's ruling now stands as the "law of the case" and precludes JPMC from invoking the same jurisdictional provision that it invoked previously, and that the Court found not to apply, as a basis to dismiss Debtors' Counterclaims. *Cont'l Airlines*, 279 F.3d at 232.

JPMC's relentless effort to pursue the same failed argument in multiple motions highlights the importance of the considerations underlying the doctrine, *i.e.*, finality, consistency and judicial economy. In addition to relying on its discredited interpretation of FIRREA here and in its Motion to Stay, JPMC makes essentially the same argument in its pending Motion to Withdraw the Reference. JPMC is pressing these arguments, moreover, knowing that the FDIC will be pursuing the same position in a motion for leave to take an interlocutory appeal. The Court's ruling rejecting JPMC's argument when it was advanced in the Motion to Stay was informed by extensive briefing and argument by four sophisticated parties—Debtors, the Creditors' Committee, JPMC and the FDIC—and was dictated by Third Circuit precedent, as well as by the language, structure and policies underlying FIRREA. The law of the case doctrine

serves to preserve this ruling, which was fully considered and thoroughly reasoned, while preventing JPMC from bogging down these proceedings through a barrage of motions addressed to the identical issue.⁴

B. The Court’s Holding was Correct

The Court was correct to reject JPMC’s flawed reading of FIRREA. As detailed in Debtors’ Opposition to the Motion to Stay, the FIRREA jurisdictional bar, 12 U.S.C. § 1821(d)(13)(D), does not apply to claims against a successor bank, such as JPMC, concerning assets transferred out of receivership. In fact, that was the Third Circuit’s precise holding in *Rosa v. RTC*, 938 F.2d 383, 392-93 (3d Cir. 1991) (“The language of the bar simply states that it applies when there is an institution for which RTC ‘has been’ appointed receiver. Thus the issue under bar is whether, *at the time the case came before the district court*, RTC had been appointed receiver of the institutions At the time the complaint was filed, [the successor bank] was in conservatorship, not receivership. Thus, [the successor bank] was not then a depository institution ‘for which the Corporation has been appointed receiver.’”) (emphasis added).

⁴ While courts may of course revisit issues that “impinge on their jurisdictional powers,” the Third Circuit directs that they do so only “when extraordinary circumstances warrant such reconsideration.” *Pub. Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 118 (3d Cir. 1997) (granting reconsideration of standing determination where district court’s initial ruling was undermined by subsequent findings based on new evidence); *cf. In re Memorial Estates*, 950 F.2d 1364 (7th Cir. 1991) (law of the case precluded court from reconsidering argument about subject matter jurisdiction); *Parker v. King*, 935 F.2d 1174, 1178 (11th Cir. 1991) (court’s power to consider its own subject matter jurisdiction circumscribed by the law of the case doctrine); *McCurry v. Tesch*, 824 F.2d 638, 640 (8th Cir. 1987) (court bound by prior decision in the same case on issue relating to subject matter jurisdiction). As set forth in Section IB, *infra*, there are no “extraordinary circumstances” casting doubt on the Court’s decision that section 1821(d)(13)(D) imposes no jurisdictional bar in an action against a successor bank not in receivership.

In *Rosa*, the Court held that the jurisdictional bar under FIRREA did not apply with respect to a claim for ERISA benefits asserted against a successor bank that, as of the filing of the complaint, was not in receivership. In reaching this holding, the Court specifically addressed both provisions of section 1821(d)(13)(D):

We do not believe [claims against the successor bank] fall under [§ 1821(d)(13)(D)(i)] because they seek neither payment from nor a determination of rights with respect to the assets of a depository institution for which RTC has been appointed receiver Nor does [§ 1821(d)(13)(D)(ii)] bar these claims. This is so because we construe the ‘relating’ language of that clause to refer to claims against the very institution whose acts are challenged, which must be an institution for which RTC has been appointed receiver.

Id. at 394. Thus, when it rejected JPMC’s argument previously, this Court properly adhered to the Third Circuit’s holding that the jurisdictional bar under FIRREA applies only to claims “against a receiver or an institution in receivership.” (Tr. 6/24/09 at 93-94.) Furthermore, as the Court recognized, Debtors do not assert either type of claim here. (*Id.*)

Demonstrating that it has no real answer for *Rosa*, JPMC made the absurd suggestion during the June 24 Hearing that *Rosa* was somehow “overruled” (Tr. 6/24/09 at 58) by the Third Circuit’s subsequent decision in *National Union Fire Insurance Co. v. City Savings F.S.B.*, 28 F.3d 376 (3d Cir. 1994). See *Interfaith Cmty Org. v. Honeywell Int’l, Inc.*, 426 F.3d 694, 704 (3d Cir. 2005) (“It is well settled in this Circuit that a three-judge panel may not overrule a decision by an earlier panel.”). The Court in *National Union* held that a declaratory judgment action *against the receiver of a failed bank*, concerning insurance policies that were *assets in receivership*, was governed by FIRREA. That is fully consistent with *Rosa*’s holding that the jurisdictional bar under FIRREA applies only to claims either for assets in receivership or against the receiver—in fact, the claims in *National Union* met both of those criteria. It is not surprising,

therefore, that the Court in *National Union*, far from purporting to “overrule” *Rosa*, in fact relied on that decision in support of its holding.⁵

In a case decided after *National Union*, the Third Circuit once again reaffirmed the holding of *Rosa*. See *Hudson United Bank v. Chase Manhattan Bank of Connecticut, N.A.*, 43 F.3d 843 (3d Cir. 1994). The *Hudson* Court invoked *Rosa* for the specific proposition that the jurisdictional bar under section 1821(d)(13)(D)(i) “applied only to claims against failed institutions while (ii) applied to claims against the failed institutions specified in (i) as well as to claims against the receiver of such institutions.” *Id.* at 847 n.10; see also *id.* at 852 (“[*Rosa*] held that claims against the receiver, as well as claims against the failed institution, were subject to the ‘statutory exhaustion requirement’ of administrative review”). The *Hudson* Court further explained that the specific policy concern underlying the FIRREA jurisdictional bar was to ensure that “claims against the receiver” and “claims against the [failed depository] institution” would be treated in the same way so that the FDIC would not be required to “defend actions at various locations throughout the country.” *Id.* at 849. This action does not involve claims against the FDIC, and it does not involve claims for assets in receivership. Rather, Debtors’ Counterclaims are directed to assets against a successor bank, and those claims are therefore

⁵ The Third Circuit also emphasized in *National Union* that its willingness to apply the jurisdictional bar under Section 1821(d)(13)(D) to an action that plaintiffs could not otherwise advance through the FIRREA administrative claims process was strictly limited to declaratory judgment actions. *Id.* at 391 (“[W]here an action is not *merely declaratory* in nature, but rather asserts a *right to payment*, a complete bar to such a right-to-payment action in administrative proceedings and in courts of law would appear to constitute an unconstitutional deprivation of due process, since the holder of the right to payment would never have an opportunity to be heard concerning property allegedly owed her.”) (emphasis in original). Debtors’ Counterclaims seek recovery of billions of dollars, and are obviously not directed to declaratory relief.

specifically authorized by *Rosa*, *National Union* and *Hudson*.⁶ The Court was correct when it made that determination previously, and there is no “extraordinary circumstance” casting doubt on its decision.

II. JPMC FAILS TO IDENTIFY ANY BANKING LAW PROVISION THAT BARS THIS ACTION

A. Debtors’ Claims Against JPMC Do Not Conflict With “Federal Banking Law”

Unable to rely on the specific jurisdictional bar under FIRREA, JPMC resorts to arguing that Debtors’ Counterclaims pose a “direct challenge” to the FDIC’s regulatory authority and must therefore be dismissed as contrary to general “federal banking law.” (Mot. to Dismiss at 21.) Both of the premises underlying this argument are fundamentally wrong. First, Debtors are not advancing a “direct challenge” to the authority of the FDIC. Rather, in an adversary proceeding that JPMC initiated, Debtors are asserting bankruptcy and state law Counterclaims against JPMC, seeking assets that are not in receivership. The FDIC’s interests in these proceedings, to the extent it has any interest at all, are plainly indirect. And, as discussed, the

⁶ Rather than acknowledge the Third Circuit’s clear holding in *Rosa* (as reaffirmed in *Hudson*), JPMC again relies on the Sixth Circuit’s decision in *Village of Oakwood v. State Bank & Trust Co.*, 39 F.3d 373 (6th Cir. 2008). Even if *Oakwood* could somehow override the law of this circuit—and plainly it cannot—the holding in that case is fully consistent with Debtors’ position. The plaintiffs in *Oakwood* based their claim on an alleged breach of duty by the receiver, in connection with uninsured deposits that were never transferred out of receivership. *Id.* at 376; see also *Village of Oakwood v. State Bank & Trust Co.*, 519 F. Supp. 2d 730, 739 (N.D. Ohio 2007) (“Through this agreement, the FDIC transferred some liabilities to [the successor bank], but [the successor bank] did not assume liability for uninsured deposits or the actions of the FDIC.”). Thus, while plaintiff ostensibly sued a third party bank in an effort to excuse its failure to adhere to the FIRREA claims process, its claim was truly against the receiver and concerned assets that the receiver still possessed; thus, it was barred. Here, in obvious contrast, the assets at issue are not in receivership, and Debtors’ claims are in fact against a successor bank.

Third Circuit has already held that FIRREA imposes no jurisdictional obstacle to a claim for damages against a successor bank. *Rosa*, 938 F.2d at 393.

Second, there is no general “federal banking law” that can be invoked to supplement the specific provisions of FIRREA in order to protect any supposed interests of the FDIC in this proceeding. See *O’Melveny & Myers v. FDIC*, 512 U.S. 79, 83 (1994); see also *Atherton v. FDIC*, 519 U.S. 213, 226 (1997) (holding that “[t]here is no federal common law that would create a general standard of care applicable” to a claim by the FDIC alleging negligence against former directors of a failed bank). In *O’Melveny*, the FDIC invoked federal common law, in a suit against the former counsel of a failed bank for negligence and breach of fiduciary duty, as a basis to defeat the defense, under state law, that the knowledge of the failed bank’s corrupt officers could be imputed to the bank (and, thus, to the FDIC). The Court explained its decision rejecting the FDIC’s argument and holding that the state law defense was available: “It is hard to avoid the conclusion that § 1821(d)(2)(A)(i) places the FDIC in the shoes of the insolvent S & L, to work out its claims under state law, except where some provision in the extensive framework of FIRREA provides otherwise. To create additional ‘federal common-law’ exceptions is not to ‘supplement’ this scheme, but to alter it.” 512 U.S. at 83. Similarly, in *FDIC v. Deglau*, 207 F.3d 153 (3d Cir. 2000), the FDIC invoked the common law *D’Oench* doctrine as a basis to bar plaintiff, a loan guarantor who sought to open a judgment in the FDIC’s favor, from invoking unofficial side agreements that purportedly released him from his loan obligation. The Court rejected the FDIC’s position, explaining that Section 1823(e), a FIRREA provision addressed to the enforceability of written agreements, “is comprehensive and detailed, and under *O’Melveny* and *Atherton* we do not think *D’Oench* is needed to supplement it.” *Id.* at 171.

Thus, it is well settled that there is no “federal banking law” that supplements FIRREA in order to further any general policy concerns underlying that statute. To the extent that Congress believed it was necessary to prevent certain actions to ensure that the FDIC could perform its work, it enacted numerous detailed provisions under FIRREA, including section 1821(d)(13)(D). As the Court has already held, that bar does not apply to claims for assets held by successor banks, and, as such, it does not apply here. By asking that the Court nevertheless dismiss Debtors’ Counterclaims on the basis of vaguely described “federal banking law,” JPMC is essentially asking that the Court invent a common law jurisdictional bar that would supplement the specific provisions that Congress saw fit to include within “the extensive framework of FIRREA.” *O’Melveny*, 512 U.S. at 83. That is a request without any legal basis and it should plainly be rejected. *Id.*; *see also Deglau*, 207 F.3d at 166 (“where Congress has promulgated a comprehensive and detailed statute [*i.e.*, FIRREA], the court must presume that state law rather than federal common law governs matters unaddressed in the federal statute. . . .”) (citing *O’Melveny*, 512 U.S. at 85-88); *RTC v. Fidelity & Deposit Co. of Md.*, 205 F.3d 615, 626 (3d Cir. 2000) (finding “no basis for fashioning a federal rule of decision to resolve” dispute involving the FDIC).⁷

⁷ Counterclaims Ten and Fourteen assert state law claims and therefore fall squarely within the Supreme Court’s specific holding in *O’Melveny* that there is no federal banking common law that displaces state law. As discussed in the text, JPMC’s attack on Debtors’ other Counterclaims, which arise under federal statute, defies long-standing precedent rejecting the implied repeal of one federal statute by another. To the extent JPMC believes that Title 12 should protect it, *O’Melveny* teaches that any purported “gap” in the statutory scheme is a matter JPMC should take to Congress, not the courts. *See also Sea-Land Serv., Inc. v. Barry*, 41 F.3d 903, 910 (3d Cir. 1994) (“It is by now axiomatic that ‘the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.’ Absent ambiguity in the statute, we cannot allow policy to guide our analysis.”). As the text of 12 U.S.C. § 1828(u) reveals, (footnote continued)

Furthermore, Debtors' claims are specifically authorized under or preserved by the Bankruptcy Code. *See* 11 U.S.C. §§ 541, 542, 544, 547, 548, 550. At bottom, then, JPMC is arguing that FIRREA, even to the extent that its specific statutory bar does not apply, implicitly supersedes Debtors' right to pursue causes of action that are authorized by another federal statute. JPMC can only advance this dubious argument by ignoring a long line of authority that highly disfavors any determination that one federal statute has impliedly repealed another. *See Nat'l Ass'n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, ___, 127 S. Ct. 2518, 2532 (2007) ("While a later enacted statute . . . can sometimes operate to amend or even repeal an earlier statutory provision . . . 'repeals by implication are not favored' and will not be presumed unless the 'intention of the legislature to repeal [is] clear and manifest.'") (citations omitted); *Delgado v. Stegall*, 367 F.3d 668, 675 (7th Cir. 2004) ("The Supreme Court has said that where two federal statutes can coexist, the later one is not to be deemed to have repealed the earlier one unless there is some indication of a congressional intent to do so, even though the result may be (though not in this case) to give the plaintiff a choice of federal remedies."). It is inappropriate for any court to reach such a result "unless the later statute 'expressly contradict[s] the original act' or unless such a construction is 'absolutely necessary . . . in order that the words [of the later statute] shall have any meaning at all.'" *Nat'l Ass'n*, 127 S. Ct. at 2532; *Figard v. PHH Mortgage Corp.*, 382 B.R. 695, 711 (Bankr. W.D. Pa. 2008) ("There are only two ways in which one federal statute may implicitly repeal the other: when Congress has clearly expressed their intention to do so, or where there is an irreconcilable conflict between the two statutes"). There is nothing in FIRREA—and nothing that JPMC points to—to suggest that Congress, when it

see Section II.B *infra*, Congress has specifically identified a limited set of circumstances, not present here, in which avoidance actions are prohibited in the banking context. That is a far cry from JPMC's blunderbuss attempt to eviscerate entire areas of law.

enacted FIRREA, meant to take the extraordinary step of impliedly repealing significant portions of the Bankruptcy Code, and to thereby deprive debtors of their right to assert avoidance claims against a private entity seeking assets not in receivership.

The absurdity of JPMC's position is demonstrated by the fact that numerous courts, upon finding no applicable jurisdictional bar under FIRREA, have authorized claims against a receiver, or claims pertaining to assets once in receivership, without ever suggesting that such causes of action might be barred on account of general "federal banking law." *See, e.g., Henrichs v. Valley View Dev.*, 474 F.3d 609, 614 (9th Cir. 2007) (holding that FIRREA did not bar plaintiff's claim concerning defaulted loan because the FDIC, which was appointed receiver for the failed bank that issued the loan, had assigned all of its right, title and interest in the loan to a third-party); *FDIC v. McFarland*, 243 F.3d 876, 887 n.42 (5th Cir. 2001) (permitting creditor's claims concerning mortgage liens to proceed because the FDIC had relinquished ownership thereby nullifying the jurisdictional bar of FIRREA); *Auction Co. of America v. FDIC*, 141 F.3d 1198, 329 (D.C. Cir. 1998) (holding that FIRREA did not bar company's breach of contract claims against the FDIC); *New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492 (3d Cir. 1996) (permitting mortgage foreclosure action to proceed even though the actions of the receiver were implicated); *In re Parker N. Am. Corp.*, 24 F.3d 1145, 1154 (9th Cir. 1994) (allowing preference action by the debtor against RTC because the action is "in substance an action to determine whether the RTC actually has an asset rather than an action seeking a determination of rights with respect to the assets of a depository institution") (citations and internal quotation marks omitted); *In re All Season's Kitchen, Inc.*, 145 B.R. 391 (Bankr. D. Vt. 1992) (holding that debtor's complaint attacking the validity of FDIC's lien was properly before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1334(b) and

157(b)(2)(A)). None of these actions could have gone forward if JPMC were correct that “federal banking law” somehow strips plaintiffs of claims that they are otherwise entitled to pursue merely on the basis that such claims, insofar as they involve assets once in receivership, pose a perceived “challenge” to the authority of the FDIC.

It is not surprising that JPMC’s cited authority provides no support for its untenable position. JPMC relies primarily on two decisions from the Federal Circuit addressed to takings claims against the government or federal agencies. *See Branch v. United States*, 69 F.3d 1571 (Fed. Cir. 1996); *Cal. Housing Sec., Inc. v. United States*, 959 F.2d 955 (Fed. Cir. 1992). In both decisions, the Federal Circuit held that the bank seizures at issue were appropriate and the plaintiffs were not entitled to compensation. *See Branch*, 69 F.3d at 1583 (finding no takings); *Cal. Housing Sec., Inc.*, 959 F.2d at 960 (“The government’s occupation and seizure of Saratoga did not constitute a compensable physical taking under the fifth amendment.”). These holdings have nothing whatsoever to do with Debtors’ claims here: This is not a takings action, it is not an action against the FDIC or against the federal government, and it is not an action challenging the decision to place WMB into receivership in the first instance. The very fact that a private litigant such as JPMC would rely on these inapposite decisions as the primary authority in support of its argument demonstrates that it is advancing a position without any basis in the law.

In sum, Congress enacted FIRREA with the specific jurisdictional bar that it deemed necessary to ensure that the FDIC would be able to serve its role. That bar is section 1821(d)(13)(D). And where it does not apply, as here, there is no “federal banking law” that prevents claimants from pursuing causes of action specifically authorized under the Bankruptcy Code and applicable state law. Furthermore, JPMC’s over-heated suggestion that Debtors’ Counterclaims place the entire bank regulatory system at risk could not be further off the mark.

Debtors' claims do not challenge the bank regulatory system and are not even asserted against the FDIC—rather, they are traditional causes of action asserted against a successor institution, JPMC. Furthermore, there is no policy that would be served by denying a debtor, and, by implication, its creditors, any redress whatsoever to recover assets for the benefit of a bankrupt estate. JPMC has tried from multiple angles to make the same failed argument—*i.e.*, that FIRREA bars Debtors from asserting claims against a successor bank—and its Motion to Dismiss should be denied.

B. JPMC Blatantly Distorts the Language and Scope of Section 1828(u)(1)

JPMC's next argument is nothing less than frivolous. JPMC asserts that WMI's Counterclaims 1 and 2, which seek the avoidance and recovery of approximately \$6.5 billion in capital contributions from WMI to WMB, are barred under 12 U.S.C. § 1828(u)(1). (Mot. to Dismiss at 25.) But JPMC is only able to advance this argument by blatantly mischaracterizing the terms of the cited provision. As excerpted by JPMC, section 1828(u)(1) prohibits:

[C]laim[s] against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer

(Motion to Dismiss at 25.) However, the very next passage – a passage that JPMC avoids quoting through the strategic placement of an ellipses – provides that this bar applies only, “if at the time of the transfer (A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital” JPMC cannot point to any allegation in the Counterclaims indicating the existence of a written direction within the meaning of this provision (and, in fact, there was no such written direction). That leaves JPMC simply to

ignore this requirement by omitting the pertinent statutory language from its brief. With this glaring omission corrected, it is clear that section 1828(u)(1), by its express terms, is inapplicable to Counterclaims 1 and 2 and that JPMC’s argument must therefore be rejected.⁸

Section 1828(u) does not apply for a second reason. Section 1828(u) expressly applies only to “claim[s] against any Federal banking agency” 12 U.S.C. § 1828(u)(1). As discussed, Debtors’ Counterclaims are not against the FDIC – they are against JPMC. Furthermore, the limitation to federal banking agencies is intentional. The legislative history of section 1828(u), which is quoted in note 8 *supra*, indicates that the final version of section 1828(u) was intended to limit claims “against a Federal banking agency,” and not against a private entity, like JPMC, that was a transferee of assets of an insured depository institution.

Finally, section 1828(u), far from supporting JPMC’s position, actually disproves it. As discussed in Section II.A *supra*, JPMC contends that “federal banking law,” even in the absence of a specific statutory bar, divests Debtors of their rights under the Bankruptcy Code and state law. The Supreme Court in *O’Melveny*, however, rejected the proposition that there is a federal banking common law; instead, FIRREA displaces state law only to the extent that FIRREA

⁸ JPMC makes a similar material omission in describing the legislative history of section 1828(u). JPMC argues that as the “provision’s text and legislative history make clear, Congress’ specific intention in enacting Section 1828(u) was ‘protecting the Federal banking agencies and the deposit insurance funds from claims . . . for the return of capital infusions’ in a depository institution brought by the institution’s holding company.” (Mot. to Dismiss at 25 (quoting in part H.R. Rep. No. 106-434, at 183 (1999)).) The remaining text of the relevant legislative history, however, demonstrates that section 1828(u) was intended as a *limited* defense to fraudulent transfer and preference claims. *See, e.g.*, H.R. Rep. No. 106-434, at 183 (1999) (Conf. Rep.), *reprinted in* 1999 U.S.C.C.A.N. 245, 276 (“The substitute narrows and clarifies the circumstances under which a Federal banking agency would be protected from a claim Third, section 730 specifies that no person may bring a claim against a Federal banking agency for monetary damages, return of assets, or for other legal or equitable relief in connection with such transfer, consistent with certain limitations. The House amendment only referred to claims for monetary damages or for the return of assets or other property”).

“specifically create[s] special federal rules of decision regarding claims by, and defenses against, the FDIC as receiver.” 512 U.S. at 86. Here, section 1828(u) specifically displaces a limited universe of fraudulent transfer and preference statutes, demonstrating that federal banking law permits such claims except in those limited circumstances.⁹ This proposition is consistent with the rule set forth in *O’Melveny*; JPMC’s argument is clearly not.

C. JPMC Seeks To Avoid A Factual Dispute By Mischaracterizing Debtors’ Complaint

JPMC buries its final argument in a footnote, contending that Counterclaims 1 and 3, which seek to avoid the transfer of certain capital contributions and trust securities, must be dismissed because “WMI received reasonably equivalent value for those investments as a matter of law.” (Mot. to Dismiss at 26, n. 12.) As its basis for this argument, JPMC reports that “WMI’s pleading acknowledges that its capital contributions and transfer of trust securities were pursuant to its regulatory obligations as a savings and loan holding company to bolster the financial health of its wholly owned banking subsidiary.” (*Id.* (citing Counterclaims at ¶¶ 13-25, 32-42).) In fact, the Counterclaims do not include any such assertion, and there are thus no allegations in the pleading to support JPMC’s position on a motion to dismiss. Furthermore, JPMC does not even identify the specific regulations that supposedly support its argument.

Even if there were an allegation that the transfers were made pursuant to some regulatory obligation, *BFP v. RTC*, 511 U.S. 531 (1994) does not stand for the proposition that a contribution by a bank holding company to its subsidiary to satisfy such obligations is, as a

⁹ The only claims displaced under section 1828(u) are constructive fraudulent transfer claims and preference claims asserted against “Federal banking entities” in the limited circumstances covered by sections 1828(u)(1)(A) and (B). Any actual fraudulent claims are expressly excluded from section 1828(u)’s bar for all purposes, *see* 12 U.S.C. § 1828(u)(2), and any constructive fraudulent transfer claims and preferences not subject to sections 1828(u)(1)(A) and (B) can be asserted.

matter of law, reasonably equivalent value. In fact, the Supreme Court in *BFP* “emphasize[d]” that its opinion “covers only mortgage foreclosures of real estate,” *id.* at 537 n.3, and a number of courts have limited that decision to prepetition mortgage foreclosures challenged under Bankruptcy Code section 548(a)(2)(A). *See, e.g., In re Miller*, 454 F.3d 899, 902 (8th Cir. 2006) (holding that *BFP* does not control mortgage foreclosure sale that occurred postpetition); *In re Fordu*, 201 F.3d 693, 709 n.19 (6th Cir. 1999) (refusing to extend the *BFP* holding to the domestic relations area, such as transfers of property, recognizing that “the Supreme Court took pains to limit its decision to the real estate mortgage foreclosure context”). JPMC’s remaining authority, far from supporting its Motion to Dismiss, confirms that the complaint raises factual questions that cannot be resolved at this juncture. *See, e.g., In re Fruehauf Trailer Corp.*, 444 F.3d 203 (3d Cir. 2006) (affirming a district court judgment, following extensive testimony and a three-day bench trial, to avoid a transfer under Bankruptcy Code section 548); *Mellon Bank, N.A. v. Metro Communications, Inc.*, 945 F.2d 635, 646-48 (3d Cir. 1991) (reversing district court decision voiding loan guarantee as fraudulent conveyance, reasoning, based on fact-intensive analysis, that evidence at 2-day bench trial failed to establish an absence of reasonably equivalent value).

Debtors have adequately pled that WMI did not receive reasonably equivalent value for the Capital Contributions and for the transfer of the Trust Securities, and there is no basis to dismiss those claims. *See Branch v. FDIC*, 825 F. Supp. 384, 399 (D. Mass. 1993) (denying motion to dismiss constructive fraud claims relating to debtor parent corporation’s transfers to solvent bank subsidiary, and noting that “[w]hether a transfer is made for fair consideration is a question of fact.”); *see also Federal Alpha Steel LLC Creditors’ Trust v. Federal Pipe & Steel Corp.*, 368 B.R. 679, 692-93 (N.D. Ill. 2006) (holding that whether debtor received reasonably

equivalent value in exchange for releases contained in withdrawal agreement with LLC member involved fact questions that could not be resolved on motion to dismiss); *Am. Tissue, Inc. v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 351 F. Supp. 2d 79, 105-06 (S.D.N.Y. 2004) (same).

III. DEBTORS SHOULD BE AWARDED FEES AND COSTS INCURRED OPPOSING JPMC'S MOTION TO DISMISS

Although litigants generally bear their own costs, when an attorney “multiplies the proceedings in any case unreasonably and vexatiously,” the attorney “may be required by the court to satisfy personally the excess costs, expenses and attorney fees reasonably incurred because of such conduct.” 28 U.S.C. § 1927. It is appropriate for a court to assess sanctions upon an attorney under § 1927 “where an attorney has: (1) multiplied proceedings; (2) unreasonably and vexatiously; (3) thereby increasing the cost of the proceedings; (4) with bad faith or with intentional misconduct.” *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 278 F.3d 175, 188 (3d Cir. 2002). Bad faith can be inferred where “a claim is advocated despite the fact that it is patently frivolous or where a litigant continues to pursue a claim in the face of an irrebuttable defense.” *Loftus v. Se. Pa. Transp. Auth.*, 8 F. Supp. 2d 458, 461 (E.D. Pa. 1998); *see also Boykin v. Bloomsburg Univ. Of Pa.*, 905 F. Supp. 1335, 1346 (M.D. Pa. 1995).

JPMC has unreasonably “multiplied” these proceedings, and thereby increased Debtors’ costs, by asserting the identical failed arguments in its Motion to Dismiss (and in its Motion to Withdraw the Reference) as it previously advanced without success in its Motion to Stay. Moreover, Debtors contacted JPMC following the Court’s ruling on June 24 to request that, in light of the Court’s finding that the FIRREA jurisdictional bar does not apply to Debtors’ Counterclaims, JPMC withdraw its Motion to Dismiss. Rather than spare Debtors and the Court the burden of addressing an issue that has already been resolved, JPMC elected to proceed with

its motion. This was especially egregious, moreover, since JPMC is aware that this Court and/or the District Court will be called upon to address this issue yet again in at least two other pleadings—the pending Motion to Withdraw the Reference, and the FDIC’s impending motion for leave to take an interlocutory appeal. Furthermore, to the extent that JPMC has raised any “new” issue in its Motion to Dismiss, its argument is entirely frivolous – as discussed, JPMC has invoked section 1828(u) by blatantly misrepresenting the scope and meaning of that provision through the use of a strategically placed ellipses omitting its key language.

These tactics should not be tolerated. Debtors have already prevailed on the issue of whether FIRREA acts as a bar to this Court’s subject matter jurisdiction, and their limited estates should not have to sustain the costs of defending a repetitive motion that rests on an argument the Court has already resolved in its favor. *See In Virgin Atl. Airways, Ltd. v. Nat’l Mediation Bd.*, 956 F.2d 1245, 1254 (2d Cir.), *cert. denied*, 506 U.S. 820 (1992). In *Virgin*, the district court imposed sanctions on a defendant who re-submitted a motion that had been previously denied. The district court held that the filing of the motion “was not justified by existing law or by a good faith argument for extension, modification or reversal of existing law.” *Id.* Although the Second Circuit reversed the district court’s ruling on the underlying motion, the court upheld the district court’s imposition of sanctions. According to the Second Circuit, “we cannot say that the court abused its discretion in finding that the NMB’s position in making its motion was not justified.” *Id.* at 1255.

It is essential that the Court exercise its discretion to ensure that this massive bankruptcy move forward at an efficient pace without being delayed unnecessarily through repeated examination and re-examination of issues that have already been fully resolved. By pressing the same settled issue in multiple pleadings, and by tacking on additional frivolous arguments,

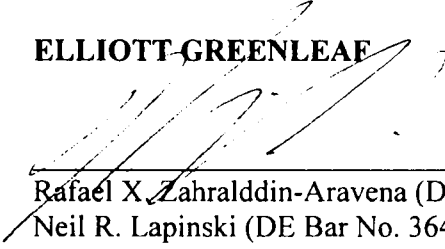
JPMC has demonstrated that its primary goal in this litigation is delay. Debtors respectfully request that the Court make clear that this is not a valid strategy going forward by imposing sanctions against JPMC as authorized under 28 U.S.C. § 1927.

CONCLUSION

For the reasons discussed, Debtors respectfully request that the Court deny JPMC's Motion to Dismiss Debtors' Counterclaims and impose sanctions against JPMC as authorized under 28 U.S.C. § 1927.

Dated: July 2, 2009
Wilmington, Delaware

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

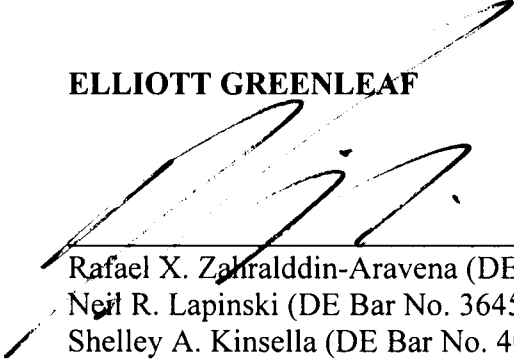
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In re: : Chapter 11
 :
WASHINGTON MUTUAL, INC., *et al.*,¹ : Case No. 08-12229 (MFW)
 :
 :
Debtors. : Jointly Administered
-----X

**CERTIFICATE OF SERVICE REGARDING
DEBTORS' OPPOSITION TO THE MOTION OF JPMORGAN
CHASE BANK, N.A. FOR WITHDRAWAL OF THE REFERENCE
OF THE ADVERSARY PROCEEDINGS PURSUANT TO 28 U.S.C. § 157(d)**

I, Neil R. Lapinski, Esquire, Delaware counsel to Washington Mutual, Inc. and WMI Investment Corp., hereby certify that I caused copies of the Debtors' Opposition to the Motion of JPMorgan Chase Bank, N.A. for Withdrawal of the Reference of the Adversary Proceedings Pursuant to 28 U.S.C. § 157(d) to be served on July 8, 2009 to all Notice Parties via hand delivery on all local parties; and via U.S. First Class Mail upon the remaining parties listed on the attached service list.

Dated: July 8, 2009
Wilmington, Delaware

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¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share their principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

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